

SENATE BILL No. 597

November 4, 2015, Introduced by Senator SCHUITMAKER and referred to the Committee on Judiciary.

A bill relating to certain trusts; to provide for the powers and procedures of the court that has jurisdiction of certain trusts; to provide for the validity and effect of certain transfers and contracts that relate to certain trusts; to provide remedies; and to provide procedures to facilitate enforcement of certain trusts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "qualified dispositions in trust act".

3 Sec. 2. As used in this act:

4 (a) "Advisor" means a person who is given authority by the
5 terms of a trust instrument to remove, appoint, or both, 1 or more
6 trustees or to direct, consent to, approve, or veto a trustee's
7 actual or proposed investment or distribution decisions. A person

1 is considered an advisor even if the person is denominated by
2 another title, such as trust protector. Any person may serve as an
3 advisor except that a transferor and any person who is related or
4 subordinate to the transferor within the meaning of section 672(c)
5 of the internal revenue code of 1986, 26 USC 672(c), may act as an
6 advisor only in connection with investment decisions.

7 (b) "Ascertainable standard" means that term as defined in
8 section 7103 of the estates and protected individuals code, 1998 PA
9 386, MCL 700.7103.

10 (c) "Claim" means a right to payment, whether or not the right
11 is reduced to judgment, liquidated, unliquidated, fixed,
12 contingent, matured, unmatured, disputed, undisputed, legal,
13 equitable, secured, or unsecured.

14 (d) "Creditor" means, with respect to a transferor, a person
15 who has a claim whether directly or indirectly.

16 (e) "Debt" means liability on a claim.

17 (f) "Discretionary trust provision" means that term as defined
18 in section 7103 of the estates and protected individuals code, 1998
19 PA 386, MCL 700.7103.

20 (g) "Disposition" means a transfer of property that either
21 creates a new fiduciary relation between at least 1 trustee and a
22 trust beneficiary or newly subjects property to a preexisting
23 fiduciary relation between at least 1 trustee and a trust
24 beneficiary. The transfer may be by conveyance or assignment, by
25 exercise of a power of appointment, including a power to substitute
26 1 trustee for another or to add 1 or more new trustees, or a power
27 of revocation or amendment or, except as provided in this

1 subdivision, by disclaimer, release, or relinquishment. A
2 disposition, however, does not include a disclaimer, release, or
3 relinquishment of property that was previously the subject of a
4 qualified disposition. For purposes of this subdivision, as between
5 a given trustee and a given beneficiary, a new fiduciary relation
6 is created whenever the terms of the governing trust instrument are
7 materially altered including alteration by an election described in
8 section 5(6) with respect to the trust beneficiary in question.

9 (h) "Distribution decision" means a decision regarding the
10 distribution of trust property to or for the benefit of a trust
11 beneficiary. Distribution decision also includes a decision
12 regarding whether to make or guaranty a loan to or for the benefit
13 of a trust beneficiary.

14 (i) "Fiduciary disposition" means a disposition made by a
15 trustee acting in a fiduciary capacity.

16 (j) "Fiduciary qualified disposition" means a qualified
17 disposition made by a trustee acting in a fiduciary capacity.

18 (k) "General power of appointment" means a general power as
19 that term is defined in section 2 of the powers of appointment act
20 of 1967, 1967 PA 224, MCL 556.112. However, a power exercisable in
21 favor of the donee, his or her estate, his or her creditors, or the
22 creditors of his or her estate that is limited by an ascertainable
23 standard is not a general power of appointment.

24 (l) "Investment decision" means a decision regarding whether
25 or not to purchase, sell, exchange, tender, or pledge any trust
26 property. Investment decision also includes decisions regarding
27 other transactions affecting the ownership of or rights in any

1 trust property, other than distribution decisions. Unless otherwise
2 provided in the trust instrument, investment decision includes a
3 decision regarding whether to make or guaranty a loan to or on
4 behalf of an entity in which the trust owns an interest, directly
5 or indirectly, in the entity's debt or equity.

6 (m) "Organization" means that term as defined in section 1106
7 of the estates and protected individuals code, 1998 PA 386, MCL
8 700.1106.

9 (n) "Person" means that term as defined in section 1106 of the
10 estates and protected individuals code, 1998 PA 386, MCL 700.1106.

11 (o) "Property" means that term as defined in section 1106 of
12 the estates and protected individuals code, 1998 PA 386, MCL
13 700.1106.

14 (p) "Qualified disposition" means, subject to subparagraph
15 (iii), a disposition after which both subparagraphs (i) and (ii)
16 apply to the subject property:

17 (i) The subject property is owned by 1 or more trustees at
18 least 1 of whom is a qualified trustee.

19 (ii) The subject property is governed by a trust instrument
20 including, but not limited to, a trust instrument as modified by an
21 election described in section 5(6), under which the transferor only
22 has rights, powers, and interests that are permitted by section
23 4(2).

24 (iii) A disposition is not a qualified disposition to the
25 extent that, at the time of the disposition, the transferor is in
26 arrears on a child support obligation by more than 30 days.

27 (q) "Qualified trust beneficiary" means that term as defined

1 in section 7103 of the estates and protected individuals code, 1998
2 PA 386, MCL 700.7103.

3 (r) "Qualified trustee" means a person, other than the
4 transferor, who meets all of the following conditions:

5 (i) For an individual, the individual is a resident of this
6 state or, in all other cases, is authorized by the law of this
7 state to act as a trustee and whose activities are subject to
8 supervision by the department of insurance and financial services,
9 the Federal Deposit Insurance Corporation, the Comptroller of the
10 Currency, or the Office of Thrift Supervision.

11 (ii) The person maintains or arranges for custody in this
12 state of some or all of the property that is the subject of the
13 qualified disposition and administers all or part of the trust in
14 this state.

15 (iii) The person's usual place of business where some of the
16 records pertaining to the trust are kept is located in this state
17 or, if the person does not have such a place of business, the
18 person's residence is in this state. For a corporate trustee, the
19 usual place of business is the business location of the primary
20 trust officer.

21 (s) "Retirement benefit" means an interest in 1 of the
22 following types of assets if payable to a trust as a beneficiary or
23 owned by the trust: a qualified or nonqualified annuity; a benefit
24 under a qualified or nonqualified plan of deferred compensation;
25 any account in, or benefit payable under, any pension, profit-
26 sharing, stock bonus, or other qualified retirement plan; any
27 individual retirement account or trust; and all benefits under a

1 plan or arrangement that is established under section 401, 403,
2 408, 408A, or 457 or a similar provision of the internal revenue
3 code of 1986, 26 USC 401, 403, 408, 408A, and 457.

4 (t) "Settlor" means that term as defined in section 7103 of
5 the estates and protected individuals code, 1998 PA 386, MCL
6 700.7103.

7 (u) "Special power of appointment" means a special power as
8 defined in section 2 of the powers of appointment act of 1967, 1967
9 PA 224, MCL 556.112.

10 (v) "Spendthrift provision" means that term as defined in
11 section 7103 of the estates and protected individuals code, 1998 PA
12 386, MCL 700.7103.

13 (w) "Spouse" and "former spouse" mean only an individual to
14 whom the transferor was married at, or before, the time the
15 qualified disposition is made.

16 (x) "Support provision" means that term as defined in section
17 7103 of the estates and protected individuals code, 1998 PA 386,
18 MCL 700.7103.

19 (y) "Transferor" means any of the following, as applicable:

20 (i) A person and, for more than 1 owner of undivided
21 interests, each of several persons, who, as a beneficial owner of
22 certain property, or as the holder of a general power of
23 appointment over certain property, directly or indirectly, makes a
24 disposition of the property or causes a disposition to be made.

25 (ii) For a fiduciary disposition, the person or persons who,
26 as of the time of the fiduciary disposition, most recently fit the
27 description in subparagraph (i) with respect to the property

1 subject to the fiduciary disposition.

2 (z) "Trust beneficiary" means that term as defined in section
3 7103 of the estates and protected individuals code, 1998 PA 386,
4 MCL 700.7103.

5 (aa) "Trust instrument" means an instrument appointing a
6 qualified trustee or qualified trustees for the property that is
7 the subject of a disposition to which all of the following apply:

8 (i) The instrument expressly incorporates the law of this
9 state to govern the validity, construction, and administration of
10 the trust.

11 (ii) The instrument is irrevocable.

12 (iii) The instrument provides that the interest of the
13 transferor or other trust beneficiary in trust property may not be
14 transferred, assigned, pledged, or mortgaged, whether voluntarily
15 or involuntarily, before the qualified trustee or qualified
16 trustees actually distribute trust property to the trust
17 beneficiary, and that provision of the trust instrument is
18 considered a restriction on the transfer of the transferor's
19 beneficial interest in the trust that is enforceable under
20 applicable nonbankruptcy law within the meaning of section
21 541(c)(2) of the bankruptcy code 11 USC 541(c)(2).

22 Sec. 3. (1) The probate court has exclusive jurisdiction over
23 an action that addresses either of the following questions:

24 (a) Whether a transfer is a qualified disposition.

25 (b) The extent of the transferor's interest in, or the income
26 from, a qualified disposition.

27 (2) The probate court has concurrent jurisdiction over an

1 action brought under section 5(2).

2 (3) Venue for a proceeding under subsection (1) or (2) is as
3 follows:

4 (a) For a trust registered under section 7209 of the estates
5 and protected individuals code, 1998 PA 386, MCL 700.7209, the
6 place of registration.

7 (b) For a trust that is not registered, in any place where the
8 trust properly could be registered.

9 (4) If a trust has no qualified trustee and has not been
10 registered, and there is no place in this state where the trust
11 properly could be registered, venue for a proceeding under
12 subsection (1) or (2) is in the following order of priority, except
13 to the extent otherwise provided by court rule:

14 (a) In a county in this state in which the immediately
15 preceding qualified trustee had its usual place of business or
16 residence.

17 (b) In a county in this state in which a trust beneficiary
18 resides.

19 (c) In a county in this state in which any trust property is
20 located.

21 (d) In any county in this state.

22 Sec. 4. (1) A transferor has only the powers and rights that
23 are conferred by the trust instrument. Except as otherwise provided
24 in subsection (2), a transferor does not have powers or rights with
25 respect to the property that is the subject of a qualified
26 disposition or the income from the property, and any agreement or
27 understanding that purports to grant or permit the retention of any

1 greater powers or rights is void.

2 (2) A trust instrument may provide for 1 or more of the
3 following rights, powers, or interests, none of which grants or is
4 considered, either alone or in any combination, a power to revoke a
5 trust:

6 (a) The transferor's power to direct the investment decisions
7 of the trust.

8 (b) The transferor's power to veto a distribution from the
9 trust.

10 (c) A special power of appointment exercisable by will or
11 other written instrument of the transferor effective only on the
12 transferor's death.

13 (d) The transferor's potential or actual receipt of income,
14 including rights to the income retained in the trust instrument.

15 (e) The transferor's potential or actual receipt of income or
16 principal from a charitable remainder unitrust or charitable
17 remainder annuity trust as those terms are defined in section 664
18 of the internal revenue code of 1986, 26 USC 664; and the
19 transferor's right, at any time by written instrument delivered to
20 the trustee, to release the transferor's interest in the trust, in
21 whole or in part, in favor of a charitable organization that has or
22 charitable organizations that have a succeeding beneficial interest
23 in the trust.

24 (f) The transferor's potential or actual receipt of income or
25 principal from a grantor retained annuity trust or grantor retained
26 unitrust as those terms are described in section 2702 of the
27 internal revenue code of 1986, 26 USC 2702, or the transferor's

1 receipt each year of a percentage, not to exceed 5%, as provided in
2 the governing instrument of the initial value of the trust property
3 which value may be described either as a percentage or a fixed
4 amount or determined from time to time under the governing
5 instrument.

6 (g) The transferor's potential or actual receipt or use of
7 principal if the potential or actual receipt or use of principal
8 would be the result of a trustee's acting under any of the
9 following:

10 (i) A discretionary trust provision.

11 (ii) A support provision.

12 (iii) The direction of an advisor acting under a discretionary
13 trust provision or support provision.

14 (h) The transferor's right to remove a trustee or advisor and
15 to appoint a new trustee or advisor.

16 (i) The transferor's potential or actual use of real property
17 held under a qualified personal residence trust within the meaning
18 of that term as described in section 2702(c) of the internal
19 revenue code of 1986, 26 USC 2702(c), or the transferor's
20 possession and enjoyment of a qualified annuity interest within the
21 meaning of that term as described in 26 CFR 25.2702-5(c)(8).

22 (j) The transferor's potential or actual receipt of income or
23 principal to pay, in whole or in part, income taxes due on income
24 of the trust if the potential or actual receipt of income or
25 principal is under a provision in the trust instrument that
26 expressly provides for the payment of those taxes and if the
27 potential or actual receipt of income or principal would be the

1 result of a qualified trustee's or qualified trustees' acting in
2 any of the following ways:

3 (i) In the qualified trustee's or qualified trustees'
4 discretion or under a mandatory direction in the trust instrument.

5 (ii) At the direction of an advisor who is acting in the
6 advisor's discretion.

7 (k) After the transferor's death, the power of a qualified
8 trustee to pay the transferor's debts, the expenses of
9 administering the transferor's estate, or any estate or inheritance
10 tax imposed on or with respect to the transferor's estate, without
11 regard to the source of the payment.

12 (l) The transferor's actual or potential receipt of a minimum
13 required distribution as defined in 26 USC 4974(b) with respect to
14 a retirement benefit.

15 Sec. 5. (1) Notwithstanding any other provision of this act,
16 with respect to any qualified disposition, a creditor has only the
17 rights provided in this section and section 7.

18 (2) For an action brought by a creditor for an attachment or
19 other provisional remedy against property that is the subject of a
20 qualified disposition or for avoidance of a qualified disposition,
21 all of the following apply:

22 (a) Except for the limitation period provided under subsection
23 (3), the action may only be brought under sections 4 and 5 of the
24 uniform fraudulent transfer act, 1998 PA 434, MCL 566.34 and
25 566.35.

26 (b) For a creditor whose claim arose after a qualified
27 disposition, the action must involve a qualified disposition that

1 was made with actual intent to defraud the creditor.

2 (c) The allegations in the action must be proved by clear and
3 convincing evidence.

4 (3) A person shall not bring or maintain an action under
5 subsection (2) unless the action is commenced within either of the
6 following periods:

7 (a) If the claim arose before the qualified disposition was
8 made, on the later of the following:

9 (i) Two years after the qualified disposition was made or the
10 obligation was incurred.

11 (ii) One year after the qualified disposition or obligation
12 was or could reasonably have been discovered by the claimant, if
13 the person who is or may be liable for any claim fraudulently
14 concealed the existence of the claim or the identity of any person
15 who is liable for the claim from the knowledge of the person
16 entitled to sue on the claim.

17 (b) If the claim arose concurrent with or after the qualified
18 disposition, 2 years after the qualified disposition was made.

19 (4) If a trust beneficiary who has an interest in a qualified
20 disposition or in property that is subject to a qualified
21 disposition is a party to an action for annulment of a marriage,
22 divorce, or separate maintenance, all of the following apply:

23 (a) If the trust beneficiary is not the transferor of the
24 qualified disposition, the trust beneficiary's interest in the
25 qualified disposition or in property that is the subject of the
26 qualified disposition is not considered marital property, is not
27 considered, directly or indirectly, part of the trust beneficiary's

1 real or personal estate, and shall not be awarded to the trust
2 beneficiary's spouse in a judgment for annulment of a marriage,
3 divorce, or separate maintenance.

4 (b) If the trust beneficiary is the transferor of the
5 qualified disposition, the trust beneficiary's interest in the
6 qualified disposition or in property that is the subject of the
7 qualified disposition is not considered marital property, is not
8 considered, directly or indirectly, part of the trust beneficiary's
9 real or personal estate, and shall not be awarded to the trust
10 beneficiary's spouse in a judgment for annulment of a marriage,
11 divorce, or separate maintenance if either of the following apply:

12 (i) The trust beneficiary transferred the property that is the
13 subject of the qualified disposition more than 30 days before the
14 trust beneficiary's marriage that is the subject of the action.

15 (ii) The parties to the marriage agree that this subdivision
16 applies to the qualified disposition.

17 (c) If subdivisions (a) and (b) do not apply, subsections (2)
18 and (3) do not limit the transferor's spouse's property division
19 claims.

20 (5) Except as otherwise provided in subdivision (a), a
21 fiduciary qualified disposition is considered made as of the time
22 the property that is subject to the disposition was first
23 transferred to the trustee who is making the fiduciary qualified
24 disposition, or any predecessor of that trustee in an unbroken
25 succession of fiduciary ownership of the property, in a form that
26 meets either of the following requirements:

27 (a) The requirements of a qualified disposition. If the

1 property that is subject to the qualified disposition was first
2 transferred to the trustee making the disposition or the
3 predecessor trustee before the effective date of this act in a form
4 that would otherwise meet the requirements of a qualified
5 disposition, the qualified disposition is considered to have been
6 made as of the effective date of this act.

7 (b) Both of the following requirements:

8 (i) The requirements of section 2(p)(ii).

9 (ii) The requirements to be considered a qualified disposition
10 or its equivalent under the laws of another state.

11 (6) If a trustee of an existing trust proposes to make a
12 disposition that, but for the exercise of authority granted in this
13 subsection, would not be a qualified disposition because of a
14 nonconforming power of appointment of the transferor, the trustee
15 may modify the trust instrument by delivering to the qualified
16 trustee an irrevocable written election to modify the nonconforming
17 power of appointment to conform to the requirements of section
18 4(2)(c) or section 4(2)(k). An irrevocable written election
19 described in this section must include both of the following:

20 (a) A description of the modified power of appointment.

21 (b) The transferor's written consent to the modification.

22 The transferor's consent is not a disposition.

23 (7) With respect to a qualified disposition, a creditor does
24 not have a claim or cause of action against any of the following:

25 (a) The trustee of a trust that is the subject of a qualified
26 disposition.

27 (b) An advisor of a trust that is the subject of a qualified

1 disposition.

2 (c) A person involved in the counseling, drafting,
3 preparation, execution, or funding of a trust that is the subject
4 of a qualified disposition.

5 (8) If more than 1 qualified disposition is made by means of
6 the same trust instrument, all of the following apply:

7 (a) With respect to a prior qualified disposition, both of the
8 following apply:

9 (i) The making of a subsequent qualified disposition is
10 disregarded in determining whether a creditor's claim is
11 extinguished as provided in subsection (3).

12 (ii) The making of a subsequent qualified disposition is
13 disregarded in determining, as provided in subsection (4), whether
14 a trust beneficiary's interest in a qualified disposition or in
15 property that is the subject of a qualified disposition is
16 considered marital property, is considered part of a trust
17 beneficiary's real or personal estate, or may be awarded to the
18 trust beneficiary's spouse in a judgment for annulment of a
19 marriage, divorce, or separate maintenance.

20 (b) A distribution to a trust beneficiary is considered to
21 have been made from the most recent qualified disposition.

22 (9) In an action against a trustee that received property in a
23 qualified disposition, if a court takes any action declining to
24 apply the law of this state in determining the validity,
25 construction, or administration of the trust, or the effect of a
26 spendthrift provision in the trust instrument, the trustee shall
27 immediately on the court's action, and without the further order of

1 any court, cease in all respects to be trustee of the trust. The
2 former trustee does not have any power described in section 4(2)
3 except to convey the trust property to the successor trustee and,
4 at the former trustee's election, to petition the court for
5 appointment of a successor trustee and collect its attorney fees,
6 costs, and expenses. If the trust instrument does not provide for a
7 successor trustee and the trust would otherwise be without a
8 trustee, all of the following apply:

9 (a) The probate court, on the request of a qualified trust
10 beneficiary of the trust, shall appoint a successor trustee on the
11 terms and conditions it determines to be consistent with the
12 purposes of the trust and this act.

13 (b) A former trustee may, but has no duty to, petition the
14 probate court to appoint a successor trustee if a petition for
15 appointment of a successor trustee is not brought by a qualified
16 trust beneficiary within 30 days after the date on which the former
17 trustee ceases to be a trustee of the trust. If the former trustee
18 elects to petition for the appointment of a successor trustee, the
19 former trustee is entitled to reimbursement for all attorney fees,
20 costs, and expenses associated with the petition, and the amount of
21 the attorney fees, costs, and expenses is a lien against the
22 trust's property.

23 (10) A valid lien attaching to property before a qualified
24 disposition of the property survives the disposition, and the
25 trustee takes title to the property subject to the valid lien and
26 the trustee is subject to any agreements that created or perfected
27 the valid lien.

1 (11) A written agreement between a transferor and a creditor
2 may provide for any of the following:

3 (a) The transferor will have a continuing or periodic
4 obligation to disclose any qualified dispositions to the creditor.

5 (b) A qualified disposition will require the prior written
6 approval of the creditor.

7 (c) That the transferor is under those other obligations as
8 the creditor may require with respect to qualified dispositions.

9 (12) If a transfer that would otherwise be a qualified
10 disposition violates an agreement with a creditor described in
11 subsection (11), with respect to the creditor only, the transfer is
12 not a qualified disposition and this act does not affect the rights
13 of the creditor.

14 Sec. 6. (1) Except as provided in subsection (6), for purposes
15 of this section, a "qualified affidavit" means an affidavit in
16 which the transferor states that at the time of the transfer of the
17 property to the trust all of the following apply:

18 (a) The transferor has full right, title, and authority to
19 transfer the property to the trust.

20 (b) The transfer of the property to the trust will not render
21 the transferor insolvent.

22 (c) The transferor does not intend to defraud a creditor by
23 transferring the property to the trust.

24 (d) The transferor does not know of or have reason to know of
25 any pending or threatened court actions against the transferor,
26 except for those court actions identified by the transferor on an
27 attachment to the affidavit.

1 (e) The transferor is not involved in any administrative
2 proceedings, except for those administrative proceedings identified
3 on an attachment to the affidavit.

4 (f) The transferor is not currently in arrears on a child
5 support obligation by more than 30 days.

6 (g) The transferor does not contemplate filing for relief
7 under the bankruptcy code, 11 USC 101 to 1532.

8 (h) The property being transferred to the trust was not
9 derived from unlawful activities.

10 (2) The transferor shall sign a qualified affidavit before a
11 qualified disposition is made.

12 (3) A qualified affidavit is defective if it materially fails
13 to meet the criteria set forth in subsection (1), except that a
14 qualified affidavit is not defective because of any of the
15 following:

16 (a) Nonsubstantive variances from the language set forth in
17 subsection (1).

18 (b) Statements or representations in addition to those set
19 forth in subsection (1) if the statements or representations do not
20 contradict those required by subsection (1).

21 (c) Technical errors in administering an oath if the errors
22 were not the fault of the transferor and the transferor reasonably
23 relied on another person to prepare or administer the oath.

24 (4) A qualified affidavit is not required in any of the
25 following circumstances:

26 (a) From the settlor for a fiduciary qualified disposition.

27 (b) From a transferor who is not the settlor of the qualified

1 disposition, except to the extent the transferor is a beneficiary
2 of the qualified disposition and the property subject to the
3 qualified disposition was not previously subject to a qualified
4 disposition with respect to which the transferor signed a qualified
5 affidavit.

6 (c) In connection with dispositions that are part of, required
7 by, or the direct result of a prior qualified disposition supported
8 by a qualified affidavit that otherwise complies with the
9 requirements of subsection (1).

10 (5) If a qualified affidavit is required by this section, and
11 a transferor fails to timely sign a qualified affidavit or signs a
12 defective affidavit, the failure or defect may be considered as
13 evidence in an action described in section 5(2) to the extent
14 permitted by the Michigan rules of evidence, but the validity of
15 the qualified disposition is not affected in any other way because
16 of the failure or defect.

17 (6) If subsection (4)(b) applies, the required affidavit must
18 omit the statements described subsection (1)(a) and (c), and
19 include a statement that the qualified disposition is not intended
20 to defraud any creditor.

21 Sec. 7. (1) A qualified disposition may be avoided only to the
22 extent necessary to satisfy or provide for the present value,
23 taking into consideration any uncertainty of the transferor's debt
24 to the creditor at whose instance the disposition had been avoided.

25 (2) If all or any portion of a qualified disposition is
26 avoided as provided in subsection (1), all of the following apply:

27 (a) If the court is satisfied that a trustee has not acted in

1 bad faith in accepting or administering the property that is the
2 subject of the qualified disposition, both of the following apply:

3 (i) The trustee has a lien against the property that is the
4 subject of the qualified disposition in an amount equal to the
5 entire cost, including attorney fees, incurred by the trustee in
6 the defense of an action to avoid the qualified disposition. The
7 lien has priority over all other liens against the property,
8 whether or not the other liens accrued or were recorded before the
9 accrual of the lien created by this act.

10 (ii) The qualified disposition is avoided subject to the fees,
11 costs, preexisting rights, claims, and interests of the trustee and
12 of any predecessor trustee that has not acted in bad faith.

13 (b) If the court is satisfied that a trust beneficiary has not
14 acted in bad faith, the avoidance of the qualified disposition is
15 subject to the right of the trust beneficiary to retain any
16 distribution received before the creditor's commencement of an
17 action to avoid the qualified disposition. It is presumed that the
18 trust beneficiary, including a trust beneficiary who is also a
19 transferor of the trust, did not act in bad faith merely by
20 creating the trust or by accepting a distribution made under the
21 terms of the trust.

22 (c) For purposes of this subsection, it is presumed that a
23 trustee did not act in bad faith merely by accepting the property,
24 with or without a qualified affidavit, or by making any
25 distribution under the terms of the trust.

26 (3) A creditor has the burden of proving by clear and
27 convincing evidence that a trustee or trust beneficiary acted in

1 bad faith as required under subsection (2), except that, for a
2 trust beneficiary who is also the transferor, the burden on the
3 creditor is to prove that the transferor-beneficiary acted in bad
4 faith by a preponderance of the evidence. This subsection provides
5 substantive not procedural rights.

6 (4) With respect to a qualified disposition, a levy,
7 attachment, garnishment, notice of lien, sequestration, or other
8 legal or equitable process is permitted only in those circumstances
9 permitted by this act.

10 (5) Notwithstanding any other provision of this act or section
11 13 of the powers of appointment act of 1967, 1967 PA 224, MCL
12 556.123, a creditor does not have a right against the interest of a
13 trust beneficiary in a trust or portion of a trust that was a
14 qualified disposition solely because the trust beneficiary has the
15 right to authorize or direct the trustee to pay all or part of the
16 trust property in satisfaction of estate or inheritance taxes
17 imposed on or with respect to the trust beneficiary's postdeath
18 estate, or the debts of the trust beneficiary's postdeath estate,
19 or the expenses of administering the trust beneficiary's postdeath
20 estate, unless the trust beneficiary actually directs the payment
21 of the taxes, debts, or expenses, and then only to the extent of
22 the direction.

23 (6) Except as otherwise provided in the trust instrument, if a
24 married couple make a qualified disposition of property and,
25 immediately before the qualified disposition, the property, any
26 part of the property, or any accumulation to the property was,
27 under applicable law, owned by the married couple as tenants by the

1 entireties, then notwithstanding the qualified disposition, the
2 property, any part of the property, or any accumulation to the
3 property is, while held in trust during the lifetime of both
4 spouses, treated as though it were tenancy by the entireties
5 property. In an action concerning whether a creditor of either or
6 both spouses may recover the debt from the trust, on avoidance of
7 the qualified disposition, the sole remedy available to the
8 creditor with respect to trust property treated as though it were
9 tenancy by the entireties property is an order directing the
10 trustee to transfer the property to both spouses as tenants by the
11 entireties.

12 (7) Except as otherwise provided in subsection (6), on
13 avoidance of a qualified disposition to the extent permitted under
14 subsection (1), the sole remedy available to the creditor is an
15 order directing the trustee to transfer to the transferor the
16 amount necessary to satisfy the transferor's debt to the creditor
17 at whose instance the disposition has been avoided.

18 Sec. 8. (1) If a person serving as qualified trustee ceases to
19 meet the requirements of a qualified trustee and there remains no
20 trustee that meets the requirements of a qualified trustee, the
21 person serving as qualified trustee is considered to have resigned
22 as of the time of the cessation, and the successor qualified
23 trustee provided for in the trust instrument becomes a qualified
24 trustee of the trust on the successor qualified trustee's
25 acceptance of trusteeship, or in the absence of a successor
26 qualified trustee provided for in the trust instrument, the probate
27 court shall, on petition of a qualified trust beneficiary, appoint

1 a successor qualified trustee.

2 (2) A disposition that was a qualified disposition does not
3 cease to be considered a qualified disposition as a result of a
4 subsequent vacancy in the position of qualified trustee if a
5 successor qualified trustee is appointed or a proceeding for the
6 appointment of a successor qualified trustee is commenced within a
7 reasonable time after a person with authority to appoint a
8 qualified trustee or commence a proceeding to appoint a qualified
9 trustee knows of the vacancy.

10 Sec. 9. (1) A trust beneficiary does not have the power or
11 capacity to transfer any of the income from a trust or portion of a
12 trust that is a qualified disposition by his or her order,
13 voluntary or involuntary, or by an order or direction of a court.

14 (2) Except as otherwise provided in this act, the interest of
15 a beneficiary in a trust or portion of a trust that is a qualified
16 disposition is not subject to a process of attachment issued
17 against the beneficiary, and may not be taken in execution under
18 any form of legal process directed against the beneficiary,
19 trustee, trust estate, or any part of the income of the trust
20 estate, but the whole of the trust estate and the income of the
21 trust estate must go to and be applied by the trustee solely for
22 the benefit of the beneficiary, free, clear, and discharged of and
23 from all obligations of the beneficiary.

24 (3) The trustee of a qualified disposition shall disregard and
25 oppose an assignment or other act, voluntary or involuntary, that
26 is attempted contrary to this section. The trustee is entitled to
27 reimbursement for all attorney fees, costs, and expenses associated

1 with carrying out this duty, and the amount of the attorney fees,
2 costs, and expenses is a lien against the property that is the
3 subject of the qualified disposition. A trustee is not liable, and
4 a trust beneficiary or any successor trust beneficiary does not
5 have a claim or cause of action against a trustee, for a breach of
6 this duty unless the trustee's breach was in bad faith or the
7 result of reckless indifference to the purposes of the trust or the
8 interests of the trust beneficiaries.

9 (4) This section does not prohibit a beneficiary from
10 disclaiming an interest in a trust or portion of a trust that is a
11 qualified disposition or from exercising a power of appointment.

12 Sec. 10. (1) Subject to section 5(5), this act applies to
13 qualified dispositions made on or after the effective date of this
14 act.

15 (2) If any provision of this act conflicts with any provision
16 of chapter 63 of 1846 RS 63, MCL 555.1 to 555.28, or the estates
17 and protected individuals code, 1998 PA 386, MCL 700.1101 to
18 700.8206, the provision of this act prevails.

19 Enacting section 1. This act does not take effect unless
20 Senate Bill No. 598
21 of the 98th Legislature is enacted into law.