

# HOUSE BILL NO. 5110

October 10, 2023, Introduced by Reps. Wozniak and Bezotte and referred to the Committee on Judiciary.

An act to allow certain fiduciaries to convert income trusts to unitrusts, convert express unitrusts to income trusts, and change the percentage or method used to calculate unitrust amounts.

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

1       Sec. 1. This act may be cited as the "unitrust act".

2       Sec. 2. As used in this act:

3       (a) "Applicable value" means the measure of the net fair  
4 market value of a trust taken into account under section 11.

5       (b) "Entity" means a person other than an individual.

6       (c) "Express unitrust" means a trust for which, under the

1 terms of the trust without regard to this act, income or net income  
2 must or may be calculated as a unitrust amount.

3 (d) "Income" means that term as defined in section 102 of the  
4 uniform principal and income act, 2004 PA 159, MCL 555.502.

5 (e) "Income beneficiary" means that term as defined in section  
6 102 of the uniform principal and income act, 2004 PA 159, MCL  
7 555.502.

8 (f) "Income trust" means a trust that is not a unitrust.

9 (g) "Independent person" means a person that is not any of the  
10 following:

11 (i) With respect to a trust, a qualified trust beneficiary, a  
12 nonfiduciary settlor of the trust, or an individual whose legal  
13 obligation to support a beneficiary may be satisfied by a  
14 distribution from the trust.

15 (ii) A spouse, parent, brother, sister, or descendant of an  
16 individual described in subparagraph (i).

17 (iii) A corporation, partnership, limited liability company, or  
18 other entity in which persons described in subparagraph (i) or (ii),  
19 in the aggregate, have voting control.

20 (iv) An employee of a person described in subparagraph (i), (ii),  
21 or (iii).

22 (h) "Net fair market value of a trust" means the fair market  
23 value of the assets of the trust less the noncontingent liabilities  
24 to which those assets are subject in the hands of the trustee.

25 (i) "Net income" means that term as defined in section 102 of  
26 the uniform principal and income act, 2004 PA 159, MCL 555.502.

27 (j) "Person" means an individual or corporation, including a  
28 fiduciary of an estate or trust, a business trust, partnership,  
29 limited liability company, association, joint venture, public

1 corporation, government or governmental subdivision, agency, or  
2 instrumentality, or any other legal or commercial entity.

3 (k) "Principal" means that term as defined in section 102 of  
4 the uniform principal and income act, 2004 PA 159, MCL 555.502.

5 (l) "Qualified trust beneficiary" means that term as defined in  
6 section 7103 of the estates and protected individuals code, 1998 PA  
7 386, MCL 700.7103.

8 (m) "Record" means information that is inscribed on a tangible  
9 medium or that is stored in an electronic or other medium and is  
10 retrievable in perceivable form.

11 (n) "Settlor" means that term as defined in section 7103 of  
12 the estates and protected individuals code, 1998 PA 386, MCL  
13 700.7103.

14 (o) "Special tax benefit" means any of the following:

15 (i) Exclusion of a transfer to a trust from gifts described in  
16 section 2503(b) of the internal revenue code of 1986, 26 USC 2503,  
17 because of the qualification of an income interest in the trust as  
18 a present interest in property.

19 (ii) Status as a qualified subchapter S trust described in  
20 section 1361(d)(3) of the internal revenue code of 1986, 26 USC  
21 1361, at a time the trust holds stock of an S corporation described  
22 in section 1361(a)(1) of the internal revenue code of 1986, 26 USC  
23 1361.

24 (iii) An estate or gift tax marital deduction for a transfer to  
25 a trust under section 2056 or 2523 of the internal revenue code of  
26 1986, 26 USC 2056 and 2523, that depends or depended in whole or in  
27 part on the right of the settlor's spouse to receive the net income  
28 of the trust.

29 (iv) Exemption in whole or in part of a trust from the federal

1 generation-skipping transfer tax imposed by section 2601 of the  
2 internal revenue code of 1986, 26 USC 2601, because the trust was  
3 irrevocable on September 25, 1985, if there is any possibility that  
4 either of the following could happen:

5 (A) A distribution under the terms of the trust that would be  
6 a taxable distribution as defined in section 2612(b) of the  
7 internal revenue code of 1986, 26 USC 2612, if the trust were not  
8 exempt in whole or in part from the federal generation-skipping  
9 transfer tax.

10 (B) A termination under the terms of the trust that would be a  
11 taxable distribution as defined in section 2612(a) of the internal  
12 revenue code of 1986, 26 USC 2612, if the trust were not exempt in  
13 whole or in part from the federal generation-skipping transfer tax.

14 (v) An inclusion ratio, as defined in section 2642(a) of the  
15 internal revenue code of 1986, 26 USC 2642, of the trust that is  
16 less than 1, if there is any possibility that either of the  
17 following could happen:

18 (A) A taxable distribution, as defined in section 2612(b) of  
19 the internal revenue code of 1986, 26 USC 2612, could be made from  
20 the trust.

21 (B) A taxable termination, as defined in section 2612(a) of  
22 the internal revenue code of 1986, 26 USC 2612, could occur with  
23 respect to the trust.

24 (p) "Terms of a trust" means that term as defined in section  
25 102 of the uniform principal and income act, 2004 PA 159, MCL  
26 555.502.

27 (q) "Trustee" means that term as defined in section 102 of the  
28 uniform principal and income act, 2004 PA 159, MCL 555.502.

29 (r) "Unitrust" means a trust for which net income is a

1 unitrust amount. Unitrust includes an express unitrust.

2 (s) "Unitrust amount" means an amount computed by multiplying  
3 a determined value of a trust by a determined percentage. For a  
4 unitrust administered under a unitrust policy, the unitrust amount  
5 means the applicable value, multiplied by the unitrust rate.

6 (t) "Unitrust policy" means a policy described in sections 8  
7 to 13 and adopted under section 6.

8 (u) "Unitrust rate" means the rate used to compute the  
9 unitrust amount for a unitrust administered under a unitrust  
10 policy.

11 Sec. 3. Except as otherwise provided in the terms of a trust  
12 or this act, this act applies to a trust if this state is the  
13 trust's principal place of administration as described in section  
14 7108 of the estates and protected individuals code, 1998 PA 386,  
15 MCL 700.7108.

16 Sec. 4. (1) Except as otherwise provided in subsection (2),  
17 this act applies to both of the following:

18 (a) An income trust, unless the terms of the trust expressly  
19 prohibit use of this act by a specific reference to this act or an  
20 explicit expression of intent that net income is not to be  
21 calculated as a unitrust amount.

22 (b) A unitrust, except to the extent the terms of the trust  
23 explicitly do any of the following:

24 (i) Prohibit use of this act by a specific reference to this  
25 act.

26 (ii) Prohibit conversion to an income trust.

27 (iii) Limit changes to the method of calculating the unitrust  
28 amount.

29 (2) This act does not apply to a trust described in section

1 170(f)(2)(B), 642(c)(5), 664(d), 2702(a)(3)(A)(ii) or (iii) or (b)  
2 of the internal revenue code of 1986, 26 USC 170, 642, 664, and  
3 2702.

4 (3) Subject to subsection (4), the terms of a trust prevail  
5 over any provision of this act.

6 (4) For purposes of subsection (1) and this subsection,  
7 references in the terms of a trust to income, net income, unitrust  
8 amounts, or to the trustee's discretion in distributing any of  
9 these are not, in the absence of additional evidence, a sufficient  
10 indication of an intent contrary to the application of this act or  
11 to the doing of anything that this act authorizes a trustee to do.

12 (5) Substituting a unitrust amount for net income or net  
13 income for a unitrust amount under this act does not otherwise  
14 affect terms of the trust concerning distributions, including  
15 discretionary terms.

16 (6) This act does not create a duty to take or consider action  
17 under this act or to inform a beneficiary about the applicability  
18 of this act apart from the notice conditionally required under  
19 section 6(2)(a).

20 (7) A trustee that in good faith takes an action that is  
21 authorized by this act is not liable to a person affected by the  
22 action.

23 Sec. 5. (1) The court shall not order a trustee to change a  
24 decision to exercise or not to exercise a discretionary power  
25 conferred by this act unless the court determines that the decision  
26 was an abuse of the trustee's discretion. A trustee's decision is  
27 not an abuse of discretion merely because the court would have  
28 exercised the power in a different manner or would not have  
29 exercised the power.

1           (2) If the court determines that a trustee has abused the  
2 trustee's discretion, the court may, by following the rules  
3 provided in section 105(3) of the uniform principal and income act,  
4 2004 PA 159, MCL 555.505, place the beneficiaries in the positions  
5 they would have occupied if the discretion had not been abused.

6           (3) Upon petition by the trustee, the court having  
7 jurisdiction over a trust shall determine whether a proposed  
8 exercise or nonexercise by the trustee of a discretionary power  
9 conferred by this act will result in an abuse of the trustee's  
10 discretion.

11           Sec. 6. (1) By complying with subsections (2) and (5), the  
12 trustee may do any of the following:

13           (a) Convert an income trust to a unitrust if the trustee  
14 adopts in a record a unitrust policy for the trust providing both  
15 of the following:

16           (i) That in administering the trust, the net income of the  
17 trust will be a unitrust amount rather than net income determined  
18 without regard to this act.

19           (ii) The percentage and method used to calculate the unitrust  
20 amount.

21           (b) Change the percentage or method used to calculate a  
22 unitrust amount for a unitrust if the trustee adopts in a record a  
23 unitrust policy or an amendment or replacement of a unitrust policy  
24 providing changes in the percentage or method used to calculate the  
25 unitrust amount.

26           (c) Convert a unitrust to an income trust if the trustee  
27 adopts in a record a determination that, in administering the  
28 trust, the net income of the trust will be net income determined  
29 without regard to this act rather than a unitrust amount.

1 (2) The trustee may take an action under subsection (1) if all  
2 of the following conditions are satisfied:

3 (a) The trustee sends a notice in a record, in the manner  
4 required by section 7, describing the proposed action.

5 (b) At least 1 member of each class of the qualified trust  
6 beneficiaries receiving the notice under subdivision (a) is 1 of  
7 the following:

8 (i) A legally competent individual.

9 (ii) An existing entity.

10 (iii) Represented in the manner provided in part 3 of article  
11 VII of the estates and protected individuals code, 1998 PA 386, MCL  
12 700.7301 to 700.7305.

13 (c) The trustee does not receive, by the date specified in the  
14 notice as required under section 7(4)(d), an objection in a record  
15 to the action proposed under subsection (1) from a person to which  
16 the notice required under subdivision (a) is sent.

17 (3) A person described in section 7(1) may oppose the proposed  
18 action in a court proceeding whether or not the person did either  
19 of the following:

20 (a) Consented under section 7(3).

21 (b) Objected under section 7(4)(c).

22 (4) If, after sending a notice under subsection (2), the  
23 trustee decides not to take the action proposed in the notice, the  
24 trustee shall notify in a record each person described in section  
25 7(1) of the decision not to take the action and the reasons for the  
26 decision.

27 (5) In deciding how to take an action authorized by subsection  
28 (1), the trustee shall consider all factors relevant to the  
29 purposes of the trust and the interests of the beneficiaries.



1 (6) A trustee may release or delegate the power to convert an  
2 income trust to a unitrust under subsection (1)(a), change the  
3 percentage or method used to calculate a unitrust amount under  
4 subsection (1)(b), or convert a unitrust to an income trust under  
5 subsection (1)(c), for reasons analogous to the reasons for  
6 releasing a power to adjust between principal and income described  
7 in section 104(6) of the uniform principal and income act, 2004 PA  
8 159, MCL 555.504. The release may be permanent or for a specified  
9 period, including a period measured by the life of an individual.

10 (7) Though a trustee that is not an independent person may  
11 exercise certain discretionary powers under this act, if a trust  
12 does not have a trustee that is an independent person, the trustee  
13 of that trust may appoint, without court approval, 1 or more  
14 special trustees that are independent persons to exercise  
15 discretionary powers under this act if the appointment complies  
16 with any limits imposed by the terms of the trust on who is  
17 eligible to serve as a cotrustee or successor trustee. Each special  
18 trustee described in this subsection shall serve as trustee for the  
19 purpose or purposes, according to the conditions and limitations,  
20 and for the duration specified by the appointing trustee.

21 Sec. 7. (1) A notice required by section 6(2)(a) must be sent  
22 in a manner authorized under section 7109 of the estates and  
23 protected individuals code, 1998 PA 386, MCL 700.7109, to all of  
24 the following:

25 (a) The qualified trust beneficiaries.

26 (b) Each person acting as a trust director as that term is  
27 defined in section 7703a of the estates and protected individuals  
28 code, 1998 PA 386, MCL 700.7703a.

29 (c) Each person that is not then a trustee or person described

1 in subdivision (b) but that has a then-exercisable power under the  
2 terms of the trust to appoint or remove a trustee or person  
3 described in subdivision (b).

4 (2) The representation provisions of part 3 of article VII of  
5 the estates and protected individuals code, 1998 PA 386, MCL  
6 700.7301 to 700.7305, apply with regard to notice and consent under  
7 this section.

8 (3) A person may consent in a record at any time to action  
9 proposed under section 6(1). A notice required by section 6(2)(a)  
10 is not required to be sent to a person that consents in a record.

11 (4) A notice required by section 6(2)(a) must include all of  
12 the following:

13 (a) A description of the action proposed under section 6(1).

14 (b) For a conversion of an income trust to a unitrust, a copy  
15 of the unitrust policy adopted under section 6(1)(a), or for a  
16 change in the percentage or method used to calculate the unitrust  
17 amount, a copy of the unitrust policy or amendment or replacement  
18 of the unitrust policy adopted under section 6(1)(b).

19 (c) A statement that the person to which the notice is sent  
20 may object to the proposed action by stating in a record the basis  
21 for the objection and sending or delivering the record to the  
22 trustee.

23 (d) The date by which an objection described in subdivision  
24 (c) must be received by the trustee, which must be at least 30 days  
25 after the date the notice is sent.

26 (e) The date on which the action is proposed to be taken and  
27 the date on which the action is proposed to take effect.

28 (f) The name and contact information of the trustee.

29 Sec. 8. (1) In administering a unitrust under this act, the

1 trustee shall follow a unitrust policy adopted under section  
2 6(1)(a) or (b) or amended or replaced under section 6(1)(b).

3 (2) A unitrust policy must provide all of the following:

4 (a) The unitrust rate or the method for determining the  
5 unitrust rate under section 10.

6 (b) The method for determining the applicable value under  
7 section 11.

8 (c) The rules described in sections 9 to 13 that apply in the  
9 administration of the unitrust, either because the rules are  
10 mandatory, as provided in sections 11(1) and 12(1), or because the  
11 rules are optional, as provided elsewhere in sections 10 to 13, and  
12 the trustee has elected to adopt the rules.

13 Sec. 9. (1) If a trust qualifies for a special tax benefit or  
14 has no trustee that is an independent person, all of the following  
15 apply:

16 (a) The unitrust rate established under section 10 must not be  
17 less than 3% or more than 5%.

18 (b) A unitrust policy may provide methods described in section  
19 11(2) only for the following:

20 (i) Obtaining an appraisal of any asset for which fair market  
21 value is not readily available.

22 (ii) Identification and treatment of cash or property held for  
23 distribution.

24 (iii) Use of an average of fair market values over a stated  
25 number of preceding periods.

26 (iv) Determining the liabilities of the trust, including  
27 treatment of liabilities to conform with the treatment of assets  
28 under subparagraphs (i) to (iii).

29 (c) The only period that may be selected under section 12(1)

1 for use under sections 10 and 11 is the calendar year.

2 (d) A unitrust policy may provide standards described in  
3 section 12(2) only for 1 or more of the following:

4 (i) Using fewer preceding periods under section 11(2)(e) (i) if  
5 the trust was not in existence in a preceding period.

6 (ii) Prorating the unitrust amount on a daily basis for a part  
7 of a period in which the trust or the administration of the trust  
8 as a unitrust or the interest of any beneficiary commences or  
9 terminates.

10 (e) The trustee of a trust that qualifies for a given special  
11 tax benefit may provide methods and standards for determining the  
12 timing of distributions under section 13(a) (i) only to the extent  
13 consistent with the trust's qualification for that benefit.

14 (2) If a trust that does not qualify for any special tax  
15 benefit has cotrustees, and 1 or more of the cotrustees is an  
16 independent person, a majority of the cotrustees that are  
17 independent persons may exercise discretionary powers under this  
18 act on behalf of the trust without regard to the limitations in  
19 subsection (1).

20 Sec. 10. (1) Except as otherwise provided in section 9(1)(a),  
21 a unitrust rate may be either of the following:

22 (a) A fixed unitrust rate.

23 (b) A unitrust rate that is determined for each period using  
24 either of the following:

25 (i) A market index or other published data.

26 (ii) A mathematical blend of market indices or other published  
27 data over a stated number of preceding periods.

28 (2) Except as otherwise provided in section 9(1)(a), a  
29 unitrust policy may provide 1 or more of the following:

1 (a) A limit on how high the unitrust rate determined under  
2 subsection (1)(b) may rise.

3 (b) A limit on how low the unitrust rate determined under  
4 subsection (1)(b) may fall.

5 (c) A limit on how much the unitrust rate determined under  
6 subsection (1)(b) may increase over the unitrust rate for the  
7 preceding period or a mathematical blend of unitrust rates over a  
8 stated number of preceding periods.

9 (d) A limit on how much the unitrust rate determined under  
10 subsection (1)(b) may decrease below the unitrust rate for the  
11 preceding period or a mathematical blend of unitrust rates over a  
12 stated number of preceding periods.

13 (e) A mathematical blend of any of the unitrust rates  
14 determined under subsection (1)(b) and subdivisions (a) to (d).

15 Sec. 11. (1) A unitrust policy must provide the method for  
16 determining the fair market value of an asset for the purpose of  
17 determining the unitrust amount, including both of the following:

18 (a) The frequency of valuing the asset, which does not need to  
19 require a valuation in every period.

20 (b) The date for valuing the asset in each period in which the  
21 asset is to be valued.

22 (2) Except as otherwise provided in section 9(1)(b), a  
23 unitrust policy may provide methods for determining the amount of  
24 the net fair market value of the trust to take into account in  
25 determining the applicable value, including 1 or more of the  
26 following:

27 (a) Obtaining an appraisal of an asset for which fair market  
28 value is not readily available.

29 (b) Exclusion of specific assets or groups or types of assets.

1 (c) Other exceptions or modifications of the treatment of  
2 specific assets or groups or types of assets.

3 (d) Identification and treatment of cash or property held for  
4 distribution.

5 (e) Use of either of the following:

6 (i) An average of fair market values over a stated number of  
7 preceding periods.

8 (ii) Another mathematical blend of fair market values over a  
9 stated number of preceding periods.

10 (f) A limit on how much the applicable value of all assets,  
11 groups of assets, or individual assets may increase over either of  
12 the following:

13 (i) The corresponding applicable value for the preceding  
14 period.

15 (ii) A mathematical blend of applicable values over a stated  
16 number of preceding periods.

17 (g) A limit on how much the applicable value of all assets,  
18 groups of assets, or individual assets may decrease below either of  
19 the following:

20 (i) The corresponding applicable value for the preceding  
21 period.

22 (ii) A mathematical blend of applicable values over a stated  
23 number of preceding periods.

24 (h) The treatment of accrued income and other features of an  
25 asset that affect value.

26 (i) Determining the liabilities of the trust, including  
27 treatment of liabilities to conform with the treatment of assets  
28 under subdivisions (a) to (h).

29 Sec. 12. (1) A unitrust policy must provide the period used

1 under sections 10 and 11. Except as otherwise provided in section  
2 9(1)(c), the period may be any of the following:

- 3 (a) A calendar year.
- 4 (b) A 12-month period other than a calendar year.
- 5 (c) A calendar quarter.
- 6 (d) A 3-month period other than a calendar quarter.
- 7 (e) Another period.

8 (2) Except as otherwise provided in section 9(1)(d), a  
9 unitrust policy may provide standards for any of the following:

10 (a) Using fewer preceding periods under section 10(1)(b)(ii) or  
11 (2)(c) or (d) in either of the following situations:

- 12 (i) The trust was not in existence in a preceding period.
- 13 (ii) Market indices or other published data are not available  
14 for a preceding period.

15 (b) Using fewer preceding periods under section 11(2)(e)(i) or  
16 (ii), (f)(ii), or (g)(ii) in either of the following situations:

- 17 (i) The trust was not in existence in a preceding period.
- 18 (ii) Fair market values are not available for a preceding  
19 period.

20 (c) Prorating the unitrust amount on a daily basis for a part  
21 of a period in which the trust or the administration of the trust  
22 as a unitrust or the interest of any beneficiary commences or  
23 terminates.

24 Sec. 13. Except as otherwise provided in section 9(1)(e), a  
25 unitrust policy may do 1 or more of the following:

- 26 (a) Provide methods and standards for 1 or more of the  
27 following:
  - 28 (i) Determining the timing of distributions.
  - 29 (ii) Making distributions in cash or in kind or partly in cash

1 and partly in kind.

2 (iii) Correcting an underpayment or overpayment to a beneficiary  
3 based on the unitrust amount if there is an error in calculating  
4 the unitrust amount.

5 (b) Specify sources and the order of sources, including  
6 categories of income for federal income tax purposes, from which  
7 distributions of a unitrust amount are paid.

8 (c) Provide other standards and rules that the trustee  
9 determines serve the interests of the beneficiaries.

10 Sec. 14. In applying and construing this act, consideration  
11 should be given to the need to promote uniformity of the law with  
12 respect to this act's subject matter among states that enact the  
13 uniform law on which this act is based, namely Article 3 of the  
14 Uniform Fiduciary Income and Principal Act.

15 Sec. 15. This act modifies, limits, or supersedes the  
16 Electronic Signatures in Global and National Commerce Act, 15 USC  
17 7001 to 7006, but does not modify, limit, or supersede section  
18 101(c) of that act, 15 USC 7001, or authorize electronic delivery  
19 of any of the notices described in section 103(b) of that act, 15  
20 USC 7003.

21 Sec. 16. This act applies to a trust existing or created on or  
22 after the effective date of this act.