

QUALIFIED DISPOSITIONS IN TRUSTS

Phone: (517) 373-8080
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House Bill 5504 (reported from committee as H-1)

Sponsor: Rep. Klint Kesto

Committee: Judiciary

Complete to 9-20-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 5504 would amend the Uniform Fraudulent Transfer Act (MCL 566.31 et al.) 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, which would be created by Senate Bill 597.

The bill is tie-barred to Senate Bill 597, which, as noted above, would create the "Qualified Dispositions in Trust Act" to provide for the creation of irrevocable trusts whose assets could not be reached by creditors, subject to specific requirements and limitations.

House Bill 5504 has the same content as Senate Bill 598, which passed the Senate as a companion to Senate Bill 597. For a full discussion of this issue, see the Senate Fiscal Agency discussion at:

<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/Senate/pdf/2015-SFA-0597-U.pdf>

House Bill 5504

The Uniform Fraudulent Transfer Act identifies various circumstances under which a transfer made or obligation incurred by a debtor is fraudulent as to a creditor.

Under one set of circumstances, a transfer or obligation is fraudulent as to a creditor if the debtor made the transfer or incurred the obligation (1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer and obligation and the debtor did either of the following:

(a) was engaged or was about to engage in a business or transaction for which the debtor's remaining assets were unreasonably small in relation to the business or transaction, or

(b) intended to incur, or believed or should have believed that he or she would incur, debts beyond his or her ability to pay as they became due. Under House Bill 5504, this provision would apply except as provided below.

House Bill 5504 specifies instead that a qualified disposition would be fraudulent as to the creditor whose claim arose after the qualified disposition only if the qualified disposition were made with actual intent to hinder, delay, or defraud any creditor of the debtor.

The Uniform Fraudulent Transfer Act describes the time periods in which a cause of action can be brought with respect to a fraudulent transfer or obligation under the act. Under House Bill 5504, an action under the act with respect to a qualified disposition would have to be brought in the time provided under the proposed Qualified Dispositions in Trust Act (as created by Senate Bill 597).

Definition of Qualified Disposition (from Senate Bill 597)

"Disposition" would mean 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 that are 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 transferor or any person related or subordinate to the transferor within the meaning of Section 672(c) of the Internal Revenue Code could act as an advisor. For this purpose, "act as an advisor" would not include the power to direct the investment decisions of the trust, the power to veto a distribution from the trust, or the right to remove a trustee or advisor and to appoint a new trustee or advisor. (Section 672(c) of the Internal Revenue Code defines "related or subordinate party" as any nonadverse party who is (1) the grantor's spouse if living with the grantor; or (2) any of the following: the grantor's father, mother, issue, brother, or sister; an employee of the grantor; a corporation or any employee of a corporation in which the stock holdings of the grantor and the trust are significant from the viewpoint of voting control; or a subordinate employee of a corporation in which the grantor is an executive.)

FISCAL IMPACT:

The bill would have no fiscal impact on state or local government.

POSITIONS:

The Michigan Bankers Association and the Probate Section of the State Bar of Michigan indicated support for the bills. (9-13-16)

Legislative Analyst: Chris Couch
Susan Stutzky
Fiscal Analyst: Robin Risko

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