

# HOUSE BILL No. 5505

March 22, 2016, Introduced by Reps. Kesto and Tedder 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

1 trustees or to direct, consent to, approve, or veto a trustee's  
2 actual or proposed investment or distribution decisions. A person  
3 is considered an advisor even if the person is denominated by  
4 another title, such as trust protector. Any person may serve as an  
5 advisor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (iv) A disposition is not a qualified disposition if a  
27 transferor or any person that is related or subordinate to the

1 transferor within the meaning of section 672(c) of the internal  
2 revenue code of 1986, 26 USC 672(c), may act as an advisor. For the  
3 purposes of this subparagraph, act as an advisor does not include  
4 the power to direct the investment decisions of the trust, the  
5 power to veto a distribution from the trust, or the right to remove  
6 a trustee or advisor and to appoint a new trustee or advisor.

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

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

12 (i) For an individual, the individual is a resident of this  
13 state or, in all other cases, is authorized by the law of this  
14 state to act as a trustee and whose activities are subject to  
15 supervision by the department of insurance and financial services,  
16 the Federal Deposit Insurance Corporation, the Comptroller of the  
17 Currency, or the Office of Thrift Supervision.

18 (ii) The person maintains or arranges for custody in this  
19 state of some or all of the property that is the subject of the  
20 qualified disposition and administers all or part of the trust in  
21 this state.

22 (iii) The person's usual place of business where some of the  
23 records pertaining to the trust are kept is located in this state  
24 or, if the person does not have such a place of business, the  
25 person's residence is in this state. For a corporate trustee, the  
26 usual place of business is the business location of the primary  
27 trust officer.

1           (s) "Retirement benefit" means an interest in 1 of the  
2 following types of assets if payable to a trust as a beneficiary or  
3 owned by the trust: a qualified or nonqualified annuity; a benefit  
4 under a qualified or nonqualified plan of deferred compensation;  
5 any account in, or benefit payable under, any pension, profit-  
6 sharing, stock bonus, or other qualified retirement plan; any  
7 individual retirement account or trust; and all benefits under a  
8 plan or arrangement that is established under section 401, 403,  
9 408, 408A, or 457 or a similar provision of the internal revenue  
10 code of 1986, 26 USC 401, 403, 408, 408A, and 457.

11           (t) "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           (u) "Special power of appointment" means a special power as  
15 defined in section 2 of the powers of appointment act of 1967, 1967  
16 PA 224, MCL 556.112.

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

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

23           (x) "Support provision" means that term as defined in section  
24 7103 of the estates and protected individuals code, 1998 PA 386,  
25 MCL 700.7103.

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

27           (i) A person and, for more than 1 owner of undivided

1 interests, each of several persons, who, as a beneficial owner of  
2 certain property, or as the holder of a general power of  
3 appointment over certain property, directly or indirectly, makes a  
4 disposition of the property or causes a disposition to be made.

5 (ii) For a fiduciary disposition, the person or persons who,  
6 as of the time of the fiduciary disposition, most recently fit the  
7 description in subparagraph (i) with respect to the property  
8 subject to the fiduciary disposition.

9 (z) "Trust beneficiary" means that term as defined in section  
10 7103 of the estates and protected individuals code, 1998 PA 386,  
11 MCL 700.7103.

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

15 (i) The instrument expressly incorporates the law of this  
16 state to govern the validity, construction, and administration of  
17 the trust.

18 (ii) The instrument is irrevocable.

19 (iii) The instrument provides that the interest of the  
20 transferor or other trust beneficiary in trust property may not be  
21 transferred, assigned, pledged, or mortgaged, whether voluntarily  
22 or involuntarily, before the qualified trustee or qualified  
23 trustees actually distribute trust property to the trust  
24 beneficiary, and that provision of the trust instrument is  
25 considered a restriction on the transfer of the transferor's  
26 beneficial interest in the trust that is enforceable under  
27 applicable nonbankruptcy law within the meaning of section

1 541(c)(2) of the bankruptcy code 11 USC 541(c)(2).

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

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

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

7 (2) The probate court has concurrent jurisdiction over an  
8 action brought under section 5(2).

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

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

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

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

21 (a) In a county in this state in which the immediately  
22 preceding qualified trustee had its usual place of business or  
23 residence.

24 (b) In a county in this state in which a trust beneficiary  
25 resides.

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



1 (d) In any county in this state.

2 Sec. 4. (1) A transferor has only the powers and rights that  
3 are conferred by the trust instrument. Except as otherwise provided  
4 in subsection (2), a transferor does not have powers or rights with  
5 respect to the property that is the subject of a qualified  
6 disposition or the income from the property, and any agreement or  
7 understanding that purports to grant or permit the retention of any  
8 greater powers or rights is void.

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

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

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

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

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

22 (e) The transferor's potential or actual receipt of income or  
23 principal from a charitable remainder unitrust or charitable  
24 remainder annuity trust as those terms are defined in section 664  
25 of the internal revenue code of 1986, 26 USC 664; and the  
26 transferor's right, at any time by written instrument delivered to  
27 the trustee, to release the transferor's interest in the trust, in

1 whole or in part, in favor of a charitable organization that has or  
2 charitable organizations that have a succeeding beneficial interest  
3 in the trust.

4 (f) The transferor's potential or actual receipt of income or  
5 principal from a grantor retained annuity trust or grantor retained  
6 unitrust as those terms are described in section 2702 of the  
7 internal revenue code of 1986, 26 USC 2702, or the transferor's  
8 receipt each year of a percentage, not to exceed 5%, as provided in  
9 the governing instrument of the initial value of the trust property  
10 which value may be described either as a percentage or a fixed  
11 amount or determined from time to time under the governing  
12 instrument.

13 (g) The transferor's potential or actual receipt or use of  
14 principal if the potential or actual receipt or use of principal  
15 would be the result of a trustee's acting under any of the  
16 following:

17 (i) A discretionary trust provision.

18 (ii) A support provision.

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

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

23 (i) The transferor's potential or actual use of real property  
24 held under a qualified personal residence trust within the meaning  
25 of that term as described in section 2702(c) of the internal  
26 revenue code of 1986, 26 USC 2702(c), or the transferor's  
27 possession and enjoyment of a qualified annuity interest within the

1 meaning of that term as described in 26 CFR 25.2702-5(c)(8).

2 (j) The transferor's potential or actual receipt of income or  
3 principal to pay, in whole or in part, income taxes due on income  
4 of the trust if the potential or actual receipt of income or  
5 principal is under a provision in the trust instrument that  
6 expressly provides for the payment of those taxes and if the  
7 potential or actual receipt of income or principal would be the  
8 result of a qualified trustee's or qualified trustees' acting in  
9 any of the following ways:

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

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

14 (k) After the transferor's death, the power of a qualified  
15 trustee to pay the transferor's debts, the expenses of  
16 administering the transferor's estate, or any estate or inheritance  
17 tax imposed on or with respect to the transferor's estate, without  
18 regard to the source of the payment.

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

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

25 (2) For an action brought by a creditor for an attachment or  
26 other provisional remedy against property that is the subject of a  
27 qualified disposition or for avoidance of a qualified disposition,

1 all of the following apply:

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

6 (b) For a creditor whose claim arose after a qualified  
7 disposition, the action must involve a qualified disposition that  
8 was made with actual intent to defraud the creditor.

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

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

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

16 (i) Two years after the qualified disposition was made or the  
17 obligation was incurred.

18 (ii) One year after the qualified disposition or obligation  
19 was or could reasonably have been discovered by the claimant, if  
20 the person who is or may be liable for any claim fraudulently  
21 concealed the existence of the claim or the identity of any person  
22 who is liable for the claim from the knowledge of the person  
23 entitled to sue on the claim.

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

26 (4) If a trust beneficiary who has an interest in a qualified  
27 disposition or in property that is subject to a qualified

1 disposition is a party to an action for annulment of a marriage,  
2 divorce, or separate maintenance, all of the following apply:

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

11 (b) If the trust beneficiary is the transferor of the  
12 qualified disposition, the trust beneficiary's interest in the  
13 qualified disposition or in property that is the subject of the  
14 qualified disposition is not considered marital property, is not  
15 considered, directly or indirectly, part of the trust beneficiary's  
16 real or personal estate, and shall not be awarded to the trust  
17 beneficiary's spouse in a judgment for annulment of a marriage,  
18 divorce, or separate maintenance if either of the following apply:

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

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

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

27 (5) Except as otherwise provided in subdivision (a), a

1 fiduciary qualified disposition is considered made as of the time  
2 the property that is subject to the disposition was first  
3 transferred to the trustee who is making the fiduciary qualified  
4 disposition, or any predecessor of that trustee in an unbroken  
5 succession of fiduciary ownership of the property, in a form that  
6 meets either of the following requirements:

7 (a) The requirements of a qualified disposition. If the  
8 property that is subject to the qualified disposition was first  
9 transferred to the trustee making the disposition or the  
10 predecessor trustee before the effective date of this act in a form  
11 that would otherwise meet the requirements of a qualified  
12 disposition, the qualified disposition is considered to have been  
13 made as of the effective date of this act.

14 (b) Both of the following requirements:

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

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

18 (6) If a trustee of an existing trust proposes to make a  
19 disposition that, but for the exercise of authority granted in this  
20 subsection, would not be a qualified disposition because of a  
21 nonconforming power of appointment of the transferor, the trustee  
22 may modify the trust instrument by delivering to the qualified  
23 trustee an irrevocable written election to modify the nonconforming  
24 power of appointment to conform to the requirements of section  
25 4(2)(c) or section 4(2)(k). An irrevocable written election  
26 described in this section must include both of the following:

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

1 (b) The transferor's written consent to the modification.  
2 The transferor's consent is not a disposition.

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

5 (a) The trustee of a trust that is the subject of a qualified  
6 disposition.

7 (b) An advisor of a trust that is the subject of a qualified  
8 disposition.

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

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

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

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

19 (ii) The making of a subsequent qualified disposition is  
20 disregarded in determining, as provided in subsection (4), whether  
21 a trust beneficiary's interest in a qualified disposition or in  
22 property that is the subject of a qualified disposition is  
23 considered marital property, is considered part of a trust  
24 beneficiary's real or personal estate, or may be awarded to the  
25 trust beneficiary's spouse in a judgment for annulment of a  
26 marriage, divorce, or separate maintenance.

27 (b) A distribution to a trust beneficiary is considered to

1 have been made from the most recent qualified disposition.

2 (9) In an action against a trustee that received property in a  
3 qualified disposition, if a court takes any action declining to  
4 apply the law of this state in determining the validity,  
5 construction, or administration of the trust, or the effect of a  
6 spendthrift provision in the trust instrument, the trustee shall  
7 immediately on the court's action, and without the further order of  
8 any court, cease in all respects to be trustee of the trust. The  
9 former trustee does not have any power described in section 4(2)  
10 except to convey the trust property to the successor trustee and,  
11 at the former trustee's election, to petition the court for  
12 appointment of a successor trustee and collect its attorney fees,  
13 costs, and expenses. If the trust instrument does not provide for a  
14 successor trustee and the trust would otherwise be without a  
15 trustee, all of the following apply:

16 (a) The probate court, on the request of a qualified trust  
17 beneficiary of the trust, shall appoint a successor trustee on the  
18 terms and conditions it determines to be consistent with the  
19 purposes of the trust and this act.

20 (b) A former trustee may, but has no duty to, petition the  
21 probate court to appoint a successor trustee if a petition for  
22 appointment of a successor trustee is not brought by a qualified  
23 trust beneficiary within 30 days after the date on which the former  
24 trustee ceases to be a trustee of the trust. If the former trustee  
25 elects to petition for the appointment of a successor trustee, the  
26 former trustee is entitled to reimbursement for all attorney fees,  
27 costs, and expenses associated with the petition, and the amount of



1 the attorney fees, costs, and expenses is a lien against the  
2 trust's property.

3 (10) A valid lien attaching to property before a qualified  
4 disposition of the property survives the disposition, and the  
5 trustee takes title to the property subject to the valid lien and  
6 the trustee is subject to any agreements that created or perfected  
7 the valid lien.

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

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

12 (b) A qualified disposition will require the prior written  
13 approval of the creditor.

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

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

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

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

27 (b) The transfer of the property to the trust will not render

1 the transferor insolvent.

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

4 (d) The transferor does not know of or have reason to know of  
5 any pending or threatened court actions against the transferor,  
6 except for those court actions identified by the transferor on an  
7 attachment to the affidavit.

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

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

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

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

17 (2) The transferor shall sign a qualified affidavit before a  
18 qualified disposition is made.

19 (3) A qualified affidavit is defective if it materially fails  
20 to meet the criteria set forth in subsection (1), except that a  
21 qualified affidavit is not defective because of any of the  
22 following:

23 (a) Nonsubstantive variances from the language set forth in  
24 subsection (1).

25 (b) Statements or representations in addition to those set  
26 forth in subsection (1) if the statements or representations do not  
27 contradict those required by subsection (1).

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

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

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

7 (b) From a transferor who is not the settlor of the qualified  
8 disposition, except to the extent the transferor is a beneficiary  
9 of the qualified disposition and the property subject to the  
10 qualified disposition was not previously subject to a qualified  
11 disposition with respect to which the transferor signed a qualified  
12 affidavit.

13 (c) In connection with dispositions that are part of, required  
14 by, or the direct result of a prior qualified disposition supported  
15 by a qualified affidavit that otherwise complies with the  
16 requirements of subsection (1).

17 (5) If a qualified affidavit is required by this section, and  
18 a transferor fails to timely sign a qualified affidavit or signs a  
19 defective affidavit, the failure or defect may be considered as  
20 evidence in an action described in section 5(2) to the extent  
21 permitted by the Michigan rules of evidence, but the validity of  
22 the qualified disposition is not affected in any other way because  
23 of the failure or defect.

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

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

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

7       (a) If the court is satisfied that a trustee has not acted in  
8 bad faith in accepting or administering the property that is the  
9 subject of the qualified disposition, both of the following apply:

10       (i) The trustee has a lien against the property that is the  
11 subject of the qualified disposition in an amount equal to the  
12 entire cost, including attorney fees, incurred by the trustee in  
13 the defense of an action to avoid the qualified disposition. The  
14 lien has priority over all other liens against the property,  
15 whether or not the other liens accrued or were recorded before the  
16 accrual of the lien created by this act.

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

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

1 terms of the trust.

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

6 (3) A creditor has the burden of proving by clear and  
7 convincing evidence that a trustee or trust beneficiary acted in  
8 bad faith as required under subsection (2), except that, for a  
9 trust beneficiary who is also the transferor, the burden on the  
10 creditor is to prove that the transferor-beneficiary acted in bad  
11 faith by a preponderance of the evidence. This subsection provides  
12 substantive not procedural rights.

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

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

1 of the taxes, debts, or expenses, and then only to the extent of  
2 the direction.

3 (6) Except as otherwise provided in the trust instrument, if a  
4 married couple make a qualified disposition of property and,  
5 immediately before the qualified disposition, the property, any  
6 part of the property, or any accumulation to the property was,  
7 under applicable law, owned by the married couple as tenants by the  
8 entireties, then notwithstanding the qualified disposition, the  
9 property, any part of the property, or any accumulation to the  
10 property is, while held in trust during the lifetime of both  
11 spouses, treated as though it were tenancy by the entireties  
12 property. In an action concerning whether a creditor of either or  
13 both spouses may recover the debt from the trust, on avoidance of  
14 the qualified disposition, the sole remedy available to the  
15 creditor with respect to trust property treated as though it were  
16 tenancy by the entireties property is an order directing the  
17 trustee to transfer the property to both spouses as tenants by the  
18 entireties.

19 (7) Except as otherwise provided in subsection (6), on  
20 avoidance of a qualified disposition to the extent permitted under  
21 subsection (1), the sole remedy available to the creditor is an  
22 order directing the trustee to transfer to the transferor the  
23 amount necessary to satisfy the transferor's debt to the creditor  
24 at whose instance the disposition has been avoided.

25 Sec. 8. (1) If a person serving as qualified trustee ceases to  
26 meet the requirements of a qualified trustee and there remains no  
27 trustee that meets the requirements of a qualified trustee, the

1 person serving as qualified trustee is considered to have resigned  
2 as of the time of the cessation, and the successor qualified  
3 trustee provided for in the trust instrument becomes a qualified  
4 trustee of the trust on the successor qualified trustee's  
5 acceptance of trusteeship, or in the absence of a successor  
6 qualified trustee provided for in the trust instrument, the probate  
7 court shall, on petition of a qualified trust beneficiary, appoint  
8 a successor qualified trustee.

9 (2) A disposition that was a qualified disposition does not  
10 cease to be considered a qualified disposition as a result of a  
11 subsequent vacancy in the position of qualified trustee if a  
12 successor qualified trustee is appointed or a proceeding for the  
13 appointment of a successor qualified trustee is commenced within a  
14 reasonable time after a person with authority to appoint a  
15 qualified trustee or commence a proceeding to appoint a qualified  
16 trustee knows of the vacancy.

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

21 (2) Except as otherwise provided in this act, the interest of  
22 a beneficiary in a trust or portion of a trust that is a qualified  
23 disposition is not subject to a process of attachment issued  
24 against the beneficiary, and may not be taken in execution under  
25 any form of legal process directed against the beneficiary,  
26 trustee, trust estate, or any part of the income of the trust  
27 estate, but the whole of the trust estate and the income of the

1 trust estate must go to and be applied by the trustee solely for  
2 the benefit of the beneficiary, free, clear, and discharged of and  
3 from all obligations of the beneficiary.

4 (3) The trustee of a qualified disposition shall disregard and  
5 oppose an assignment or other act, voluntary or involuntary, that  
6 is attempted contrary to this section. The trustee is entitled to  
7 reimbursement for all attorney fees, costs, and expenses associated  
8 with carrying out this duty, and the amount of the attorney fees,  
9 costs, and expenses is a lien against the property that is the  
10 subject of the qualified disposition. A trustee is not liable, and  
11 a trust beneficiary or any successor trust beneficiary does not  
12 have a claim or cause of action against a trustee, for a breach of  
13 this duty unless the trustee's breach was in bad faith or the  
14 result of reckless indifference to the purposes of the trust or the  
15 interests of the trust beneficiaries.

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

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

22 (2) If any provision of this act conflicts with any provision  
23 of chapter 63 of 1846 RS 63, MCL 555.1 to 555.28, or the estates  
24 and protected individuals code, 1998 PA 386, MCL 700.1101 to  
25 700.8206, the provision of this act prevails.

26 Enacting section 1. This act does not take effect unless  
27 Senate Bill No. \_\_\_\_ or House Bill No. 5504 (request no. H02132'15 a



1 \*) of the 98th Legislature is enacted into law.