

# Legislative Analysis



## QUALIFIED TRUST BENEFICIARIES AND CHARITABLE TRUSTS

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<http://www.house.mi.gov/hfa>

**House Bill 6259 as introduced**  
**Sponsor: Rep. Kelly Breen**  
**Committee: Judiciary**  
**Complete to 12-10-24**

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

### SUMMARY:

House Bill 6259 would amend the Michigan Trust Code (Article 7 of the Estates and Protected Individuals Code)<sup>1</sup> to modify the definition of *qualified trust beneficiary* and to make complimentary changes to the conditions under which a charitable organization has the rights of a qualified trust beneficiary to receive distributions from a *charitable trust* (defined as a trust, or portion of a trust, created for a charitable purpose described in section 7405(1) of the code<sup>2</sup>).

Currently, a qualified trust beneficiary means either of the following:

- A trust beneficiary<sup>3</sup> *whom the settlor<sup>4</sup> intends to benefit as a material purpose of the trust* and to whom one or more of the following apply on the date the trust beneficiary's qualification is determined (the "qualification date"):
  - The trust beneficiary is a distributee or permissible distributee<sup>5</sup> of trust income or principal.
  - The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the interests of the distributees above terminated on the qualification date without causing the trust to terminate.
  - The trust beneficiary would be a distributee or permissible distributee of trust income or principal if the trust terminated on the qualification date.
- *If, on the qualification date, there is no trust beneficiary that satisfies any of the conditions above, a trust beneficiary to whom one or more of the above conditions does apply on the qualification date.*

The bill would delete the language italicized above. In addition, the bill would provide that a trust beneficiary identified in the second or third sub-bullets above (one who "would be" a distributee under certain conditions) is not a qualified trust beneficiary if, at the time of the

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<sup>1</sup> <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-386-1998-VII.pdf>

<sup>2</sup> <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-700-7405.pdf>

<sup>3</sup> *Trust beneficiary* means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee or trust director.

<sup>4</sup> *Settlor* means a person, including a testator or a trustee, who creates a trust. If more than one person creates a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution. (The lapse, release, or waiver of a power of appointment does not cause the holder of a power of appointment to be treated as a settlor of the trust.)

<sup>5</sup> *Permissible distributee* is not defined in either the Michigan Trust Code or the Estates and Protected Individuals Code. The term has most recently been interpreted by the Court of Appeals to mean "a person who is *permitted*, not *entitled*, to receive trust property from the trustee other than as a creditor or purchaser." *In re Rhea Brody Living Trust*, 501 Mich. 1094, Amended Opinion, 4 (2018) (emphasis in original).

creation of the trust, either of the following make it seem likely that the settlor's intent in creating the beneficiary's interest was primarily to avoid the imposition of the resulting trust:

- The probability of the trust beneficiary's interest ever becoming *possessory*<sup>6</sup> is sufficiently low.
- The expected time of the trust beneficiary's interest becoming possessory, if at all, is sufficiently distant.

The bill would make analogous changes to the conditions under which a charitable organization may receive distributions under the terms of a charitable trust. Current law provides the following conditions under which these organizations have the rights of a qualified trust beneficiary:

- The charitable organization is a distributee or permissible distributee of trust income or principal.
- The charitable organization would be a distributee or permissible distributee of trust income or principal on the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions.
- The charitable organization would be a distributee or permissible distributee of trust income or principal if the trust terminated on the organization's qualification date.

The bill would amend these conditions to newly exclude charitable organizations that are not distributees or permissible distributees on organization's qualification date but are identified under the second or third bullets above if, at the time of the creation of the trust, either of the following make it seem likely that the settlor's intent in creating the organization's interest was primarily to avoid the imposition of the trust:

- The probability of the organization's interest ever becoming possessory is sufficiently low.
- The expected time of the organization's interest becoming possessory, if at all, is sufficiently distant.

MCL 700.7103 and 700.7110

#### **FISCAL IMPACT:**

House Bill 6259 would have no fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

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<sup>6</sup> A person's interest in a trust is *possessory* if their possession of a trust asset is either guaranteed or possible upon the expiration of another's interest (typically that of the settlor or current trustee).