

HOUSE BILL NO. 6259

December 05, 2024, Introduced by Rep. Breen and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code," by amending sections 7103 and 7110 (MCL 700.7103 and 700.7110), as amended by 2024 PA 1.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 7103. As used in this article:

2 (a) "Action", with respect to a trustee, includes an act or a
3 failure to act.

4 (b) "Ascertainable standard" means a standard relating to an
5 individual's health, education, support, or maintenance within the

1 meaning of section 2041(b)(1)(A) or 2514(c)(1) of the internal
2 revenue code of 1986, 26 USC 2041 and 2514.

3 (c) "Charitable trust" means a trust, or portion of a trust,
4 created for a charitable purpose described in section 7405(1). ~~if~~
5 ~~the charitable purpose is a material purpose of the trust.~~

6 (d) "Discretionary trust provision" means a provision in a
7 trust, regardless of whether the terms of the trust provide a
8 standard for the exercise of the trustee's discretion and
9 regardless of whether the trust contains a spendthrift provision,
10 that provides that the trustee has discretion, or words of similar
11 import, to determine 1 or more of the following:

12 (i) Whether to distribute to or for the benefit of an
13 individual or a class of beneficiaries the income or principal or
14 both of the trust.

15 (ii) The amount, if any, of the income or principal or both of
16 the trust to distribute to or for the benefit of an individual or a
17 class of beneficiaries.

18 (iii) Who, if any, among a class of beneficiaries will receive
19 income or principal or both of the trust.

20 (iv) Whether the distribution of trust property is from income
21 or principal or both of the trust.

22 (v) When to pay income or principal, except that a power to
23 determine when to distribute income or principal within or with
24 respect to a calendar or taxable year of the trust is not a
25 discretionary trust provision if the distribution must be made.

26 (e) "Interests of the trust beneficiaries" means the
27 beneficial interests provided in the terms of the trust.

28 (f) "Power of withdrawal" means a presently exercisable
29 general power of appointment other than a power that is either of

1 the following:

2 (i) Exercisable by a trustee and limited by an ascertainable
3 standard.

4 (ii) Exercisable by another person only on consent of the
5 trustee or a person holding an adverse interest.

6 (g) "Qualified trust beneficiary" means, ~~either of the~~
7 ~~following:~~

8 ~~(i) A **subject to subdivision (h)**, a trust beneficiary whom the~~
9 ~~settlor intends to benefit as a material purpose of the trust and~~
10 ~~to whom 1 or more of the following apply on the date the trust~~
11 ~~beneficiary's qualification is determined:~~

12 (i) ~~(A)~~The trust beneficiary is a distributee or permissible
13 distributee of trust income or principal.

14 (ii) ~~(B)~~The trust beneficiary would be a distributee or
15 permissible distributee of trust income or principal if the
16 interests of the distributees under the trust described in ~~sub-~~
17 ~~subparagraph (A)~~ **subparagraph (i)** terminated on that date without
18 causing the trust to terminate.

19 (iii) ~~(C)~~The trust beneficiary would be a distributee or
20 permissible distributee of trust income or principal if the trust
21 terminated on that date.

22 ~~(ii) If on the date a trust beneficiary's qualification is~~
23 ~~determined there is no trust beneficiary described in subparagraph~~
24 ~~(i), a trust beneficiary to whom 1 or more of the following apply on~~
25 ~~the date the trust beneficiary's qualification is determined:~~

26 ~~(A) The trust beneficiary is a distributee or permissible~~
27 ~~distributee of trust income or principal.~~

28 ~~(B) The trust beneficiary would be a distributee or~~
29 ~~permissible distributee of trust income or principal if the~~

1 ~~interests of the distributees under the trust described in sub-~~
2 ~~subparagraph (A) terminated on that date without causing the trust~~
3 ~~to terminate.~~

4 ~~(C) The trust beneficiary would be a distributee or~~
5 ~~permissible distributee of trust income or principal if the trust~~
6 ~~terminated on that date.~~

7 **(h) "Qualified trust beneficiary" does not mean a trust**
8 **beneficiary who is not described in subdivision (g) (i) on the date**
9 **of the trust beneficiary's qualification but is described in**
10 **subdivision (g) (ii) or (iii) if, as of the time of the creation of the**
11 **trust, the probability of the trust beneficiary's interest's ever**
12 **becoming possessory was so low, or the expected time of its**
13 **becoming possessory, if at all, so distant as to make it seem**
14 **likely, in the light of the terms of the trust, that the settlor's**
15 **intent in creating the trust beneficiary's interest was primarily**
16 **to avoid the imposition of the resulting trust.**

17 **(i) ~~(h)~~"Revocable", as applied to a trust, means revocable by**
18 **the settlor without the consent of the trustee or a person holding**
19 **an adverse interest. A trust's characterization as revocable is not**
20 **affected by the settlor's lack of capacity to exercise the power of**
21 **revocation, regardless of whether an agent of the settlor under a**
22 **durable power of attorney, a conservator of the settlor, or a**
23 **plenary guardian of the settlor is serving.**

24 **(j) ~~(i)~~"Settlor" means a person, including a testator or a**
25 **trustee, who creates a trust. If more than 1 person creates a**
26 **trust, each person is a settlor of the portion of the trust**
27 **property attributable to that person's contribution. The lapse,**
28 **release, or waiver of a power of appointment does not cause the**
29 **holder of a power of appointment to be treated as a settlor of the**

1 trust.

2 **(k)** ~~(j)~~—"Spendthrift provision" means a term of a trust that
3 restrains either the voluntary or involuntary transfer of a trust
4 beneficiary's interest.

5 **(l)** ~~(k)~~—"Support provision" means a provision in a trust that
6 provides the trustee shall distribute income or principal or both
7 for the health, education, support, or maintenance of a trust
8 beneficiary, or language of similar import. A provision in a trust
9 that provides a trustee has discretion whether to distribute income
10 or principal or both for these purposes or to select from among a
11 class of beneficiaries to receive distributions under the trust
12 provision is not a support provision, but rather is a discretionary
13 trust provision.

14 **(m)** ~~(l)~~—"Trust beneficiary" means a person to whom 1 or both of
15 the following apply:

16 (i) The person has a present or future beneficial interest in a
17 trust, vested or contingent.

18 (ii) The person holds a power of appointment over trust
19 property in a capacity other than that of trustee or trust
20 director.

21 **(n)** ~~(m)~~—"Trust director" means that term as defined in section
22 7703a.

23 **(o)** ~~(n)~~—"Trust instrument" means a governing instrument that
24 contains the terms of the trust, including any amendment to a term
25 of the trust.

26 Sec. 7110. (1) ~~A~~ **Subject to subsection (2),** a charitable
27 organization expressly ~~named in the terms of a trust~~ **designated** to
28 receive distributions under the terms of a charitable trust has the
29 rights of a qualified trust beneficiary under this article if 1 or

1 more of the following ~~are applicable~~**apply** to the charitable
2 organization on the date the charitable organization's
3 qualification is being determined:

4 (a) The charitable organization is a distributee or
5 permissible distributee of trust income or principal.

6 (b) The charitable organization would be a distributee or
7 permissible distributee of trust income or principal on the
8 termination of the interests of other distributees or permissible
9 distributees then receiving or eligible to receive distributions.

10 (c) The charitable organization would be a distributee or
11 permissible distributee of trust income or principal if the trust
12 terminated on that date.

13 **(2) If a charitable organization that is not described in**
14 **subsection (1) (a) on the date of the organization's qualification**
15 **is described in subsection (1) (b) or (c) on that date, that**
16 **organization does not then have the rights of a qualified trust**
17 **beneficiary if, as of the time of the creation of the trust, the**
18 **probability of the organization's interest's ever becoming**
19 **possessory was so low, or the expected time of its becoming**
20 **possessory, if at all, so distant as to make it seem likely, in**
21 **light of the terms of the trust, that the settlor's intent in**
22 **creating the organization's interest was primarily to avoid the**
23 **imposition of the trust.**

24 **(3) ~~(2)~~**A person appointed to enforce a trust created for the
25 care of an animal under section 7408 or another noncharitable trust
26 under section 7409 has the rights of a qualified trust beneficiary
27 under this article.

28 **(4) ~~(3)~~**During the nondisclosure period of a trust described
29 in section 7409a, a person granted a nondisclosure correlative

1 right or protection power over the trust has the rights of a
2 qualified trust beneficiary under this article.

3 **(5)** ~~(4)~~—The attorney general of this state has the following
4 rights with respect to a charitable trust having its principal
5 place of administration in this state:

6 (a) The rights provided in the supervision of trustees for
7 charitable purposes act, 1961 PA 101, MCL 14.251 to 14.266.

8 (b) The right to notice of any judicial proceeding and any
9 nonjudicial settlement agreement under section 7111.