

QUALIFIED DISPOSITIONS UNDER THE UNIFORM VOIDABLE TRANSACTIONS ACT

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House Bill 4618 as introduced
Sponsor: Rep. Jim Haadsma
Committee: Financial Services
Complete to 5-26-21

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

SUMMARY:

House Bill 4618 would amend the Uniform Voidable Transactions Act to change provisions concerning jurisdiction and standards of proof with regard to qualified dispositions, as defined in the Qualified Dispositions in Trust Act. Generally speaking, the Uniform Voidable Transactions Act provides a creditor with the means to reach a debtor's assets when the debtor has transferred the assets to another person or incurred an obligation under circumstances considered fraudulent or unfair to the creditor, and the Qualified Dispositions in Trust Act provides for the creation of irrevocable trusts whose assets cannot be reached by creditors if certain requirements are met.

Standard of proof

Sections 4 and 5 of the act provide that a transfer made or obligation incurred by a debtor is voidable as to certain creditors if the debtor made the transfer or incurred the obligation under circumstances specified in those sections, including doing so with actual intent to hinder, delay, or defraud a creditor or doing so without receiving a reasonably equivalent value in exchange if certain other conditions are met. A creditor seeking to show that a debtor's transfer or obligation is voidable under these sections must prove the elements of that claim by *a preponderance of the evidence*.

The bill would amend sections 4 and 5 to provide that, with respect to a ***qualified disposition***, the creditor must prove the elements of the claim by *clear and convincing evidence*.

Qualified disposition means a ***disposition*** after which both of the following apply to the subject property:

- The subject property is owned by one or more trustees, at least one of whom is a ***qualified trustee***.
- The subject property is governed by a trust instrument, including one as modified by an election described in section 5(6) of the Qualified Dispositions in Trust Act,¹ under which the transferor only has rights, powers, and interests that are permitted by section 4(2) of that act.²

However, both of the following also apply to a ***qualified disposition***:

- A disposition is not a qualified disposition to the extent that, at the time of the disposition, the transferor is in arrears on a child support obligation by more than 30 days.

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-700-1045.pdf>

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-700-1044.pdf>

- A disposition is not a qualified disposition if a transferor or any person that is related or subordinate to the transferor within the meaning of section 672(c) of the Internal Revenue Code³ may act as an advisor (not including 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).

Disposition would mean a transfer of property that either creates a new fiduciary relation between at least one trustee and a trust beneficiary or 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, except as otherwise provided, by disclaimer, release, or relinquishment. However, a disposition does not include a disclaimer, release, or relinquishment of property that was previously the subject of a qualified disposition. For purposes of these provisions, as between a given trustee and a given beneficiary, a new fiduciary relation is created whenever the terms of the governing trust instrument are materially altered, including alteration by an election described in section 5(6) of the Qualified Dispositions in Trust Act with respect to the trust beneficiary in question.

Qualified trustee would mean a person, other than the transferor, who meets all of the following conditions:

- For an individual, he or she is a resident of this state or is authorized by Michigan law to act as a trustee, and his or her activities are subject to supervision by the Department of Insurance and Financial Services (DIFS), the Federal Deposit Insurance Corporation (FDIC), the Comptroller of the Currency, or the Office of Thrift Supervision.
- The person maintains or arranges for custody in Michigan of some or all of the property that is the subject of the qualified disposition and administers all or part of the trust in Michigan.
- The person's usual place of business where some of the records pertaining to the trust are kept is located in Michigan or, if the person does not have such a place of business, his or her residence is in Michigan. For a corporate trustee, the usual place of business is the business location of the primary trust officer.

Note that each term is defined above as it is defined in the Qualified Dispositions in Trust Act. "Qualified disposition" is currently defined in the Uniform Voidable Transactions Act. The definitions for "disposition" and "qualified trustee" would be added to the act by the bill.

Jurisdiction

Section 10 of the act prescribes rules to determine a debtor's location and provides that a claim for relief under the act is governed by the local law of the jurisdiction where the debtor is located when the transfer is made or the obligation is incurred.

³ <https://www.govinfo.gov/content/pkg/USCODE-2011-title26/pdf/USCODE-2011-title26-subtitleA-chap1-subchapJ-partI-subpartE-sec672.pdf>

The bill would amend section 10 to provide that, for a qualified disposition, a claim for relief under the act or a claim that a disposition is not a qualified disposition is governed by the local law of the jurisdiction where the qualified trustee serving at the time of the disposition was located.

The bill would also add the following rules to determine a qualified trustee's location:

- A qualified trustee who is an individual is located at his or her principal residence.
- A qualified trustee whose activities are subject to supervision by DIFS, the FDIC, the Comptroller of the Currency, or the Office of Thrift Supervision is located at the business location of the primary trust officer.

MCL 566.31 et seq.

FISCAL IMPACT:

House Bill 4618 would not have a 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.