

Act No. 149
Public Acts of 2008
Approved by the Governor
May 28, 2008
Filed with the Secretary of State
May 28, 2008
EFFECTIVE DATE: May 28, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Schuitmaker, Condino and Bieda

ENROLLED HOUSE BILL No. 4602

AN ACT to amend 1988 PA 418, entitled "An act to adopt the uniform statutory rule against perpetuities," by amending sections 2 and 5 (MCL 554.72 and 554.75).

The People of the State of Michigan enact:

Sec. 2. (1) Subject to section 5, a nonvested property interest is invalid unless 1 or more of the following are applicable to the interest:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.

(b) The interest either vests or terminates within 90 years after its creation.

(2) Subject to section 5, a general power of appointment not presently exercisable because of a condition precedent is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, the condition precedent is certain either to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive.

(b) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) Subject to section 5, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive.

(b) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement that was irrevocable on September 25, 1985, language in an instrument governing the effect of an exercise of a power of appointment over property exempt from federal generation skipping transfer tax (a) seeks to disallow the vesting or termination of any interest or trust beyond, (b) seeks to postpone the vesting or termination of any interest or trust until, or (c) seeks to operate in effect in any similar fashion upon, the later of (i) the expiration of a period of time ending with, or not exceeding 21 years after, the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death

of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

Sec. 5. (1) Section 2 does not apply to any of the following:

(a) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of a premarital or postmarital agreement; a separation or divorce settlement; a spouse's election; a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties; a contract to make or not to revoke a will or trust; a contract to exercise or not to exercise a power of appointment; a transfer in satisfaction of a duty of support; or a reciprocal transfer.

(b) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income.

(c) A power to appoint a fiduciary.

(d) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal.

(e) A property interest, power of appointment, or any other arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute.

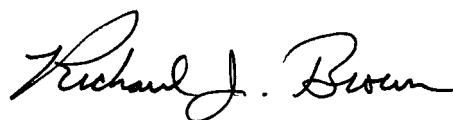
(f) Except as provided in subsection (2), an interest in, or power of appointment over, personal property held in a trust that is either revocable on or created after the effective date of the personal property trust perpetuities act.

(2) Section 2 is applicable to an interest in, or power of appointment over, personal property held in trust if the interest or power was created, or property was made subject to the interest or power, by the exercise of a second power. If section 2 is applicable to an interest or power under this subsection, it applies only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) is satisfied, or whether to reform a disposition under section 4, a period of 360 years shall be used.

(3) As used in this section, "second power" means that term as defined in section 2 of the personal property trust perpetuities act.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 5909 of the 94th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

.....
Governor