

POSTPONEMENT OF VESTING OF FUTURE INTERESTS

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House Bill 4619 (H-2) as reported from committee

Sponsor: Rep. Jim Haadsma

Committee: Financial Services

Complete to 10-23-21

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

(Enacted as Public Act 154 of 2022)

SUMMARY:

House Bill 4619 would amend the Personal Property Trust Perpetuities Act to create an exception to current provisions regarding the determination of the period during which vesting of a future interest in property may be postponed.

Currently under the act, the period during which the vesting of a future interest in property may be postponed by the exercise of a **second power** is determined under the Uniform Statutory Rule Against Perpetuities¹ by reference to the time of the creation of the power of appointment that subjected property to, or created, the second power. A nonvested interest, a general power of appointment not presently exercisable because of a condition precedent, or a nongeneral or testamentary power of appointment created, or to which property is subjected, by the exercise of the second power is invalid, to the extent of the exercise of the second power, unless the interest or power satisfies the Uniform Statutory Rule Against Perpetuities measured from the time of the creation of the power of appointment that subjected property to, or created, the second power.

Second power means a power of appointment over personal property held in trust, other than a presently exercisable general power, that is created or to which property is subjected by the exercise of either a **first power** or a **second-order fiduciary power**.

First power means a **nonfiduciary**, nongeneral power of appointment over personal property held in trust that is exercised so as to subject the property to, or to create, another power of appointment.

Second-order fiduciary power means a **fiduciary** power of appointment that is created or has property subjected to it by the exercise of one of the following:

- A first power.
- A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.
- A fiduciary power of appointment whose creation or control over property subject to the power is traceable through a succession of previous exercises of fiduciary powers to the exercise of a fiduciary power that was created or had property subjected to it by the exercise of a first power.

Nonfiduciary means, with respect to a power of appointment, that the power of appointment is not held by a trustee in a fiduciary capacity.

Fiduciary means, with respect to a power of appointment, that the power is held by a trustee in a fiduciary capacity.

¹<https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-418-of-1988.pdf>

The bill would retain the provision described above (henceforth “the current provision”), but would additionally provide that, to the extent that a second power is created or has property subjected to it by the exercise of a first power, the current provision does not apply to any future interest created by exercise of the second power if the instrument exercising the first power to subject property to or create the second power expressly declares that the current provision does not apply to any future interest created by exercise of the second power or, if the second power is a nonfiduciary power, otherwise clearly indicates that the donee of the first power intends to spring the so-called Delaware tax trap by subjecting property to or creating the second power. (For purposes of an express declaration that the current provision does not apply, it could be referred to as the anti-Delaware-tax-trap provision of the act.)

In addition, the act applies only to a nonvested interest in, or power of appointment over, personal power held in a trust that is either revocable on, or created after May 28, 2008, and only to the extent that the trust is not a special appointee trust. For purposes of this provision, a trust is a special appointee trust to the extent that it includes assets held in a trust that was irrevocable on September 25, 1985, as long as the assets have continuously been held in trust, and have not been subject to a general power of appointment, since September 25, 1985.

The bill would add that, for purposes of the above provision, a trust that is created by the exercise of a power of appointment is created when the power has been irrevocably exercised or when a revocable exercise becomes irrevocable.

MCL 554.92, 554.93, and 554.94

FISCAL IMPACT:

House Bill 4819 would have no fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Probate and Estate Planning Section of the State Bar of Michigan testified in support of the bill. (5-26-21)

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Fiscal Analyst: Marcus Coffin

■ 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.