

POSTPONEMENT OF VESTING OF FUTURE INTERESTS

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House Bill 4619 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 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/\(S\(abunahn3aask4vqtwk31vzg2\)\)/documents/mcl/pdf/mcl-Act-418-of-1988.pdf](https://www.legislature.mi.gov/(S(abunahn3aask4vqtwk31vzg2))/documents/mcl/pdf/mcl-Act-418-of-1988.pdf)

The bill would retain the provision described above (“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 both of the following apply:

- The first power was not itself created or augmented by the exercise of either a *nonexcluded first power* or a *nonexcluded second-order fiduciary power*.
- 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.)

Nonexcluded first power would mean a first power any future interest created by the exercise of which is subject to the current provision because the power was itself created or augmented by the exercise of a nonfiduciary, nongeneral power of appointment and the election described in the new provisions, above, was not made by the donor of the power.

Nonexcluded second-order fiduciary power would mean a second-order fiduciary power that is created or has property subjected to it by the exercise of one of the following:

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

MCL 554.92 and 554.93

FISCAL IMPACT:

House Bill 4619 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.