

**SUBSTITUTE FOR
HOUSE BILL NO. 4619**

A bill to amend 2008 PA 148, entitled
"Personal property trust perpetuities act,"
by amending sections 2, 3, and 4 (MCL 554.92, 554.93, and 554.94),
sections 2 and 3 as amended by 2012 PA 484 and section 4 as amended
by 2011 PA 12.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in subsection (2), the period
2 during which the vesting of a future interest in property may be
3 postponed by the exercise of a second power is determined under the
4 uniform statutory rule against perpetuities by reference to the
5 time of the creation of the power of appointment that subjected
6 property to, or created, the second power. Except as provided in
7 subsection (2), a nonvested interest, a general power of

1 appointment not presently exercisable because of a condition
2 precedent, or a nongeneral or testamentary power of appointment
3 created, or to which property is subjected, by the exercise of the
4 second power is invalid to the extent of the exercise of the second
5 power unless the interest or power satisfies the uniform statutory
6 rule against perpetuities measured from the time of the creation of
7 the power of appointment that subjected property to, or created,
8 the second power.

9 (2) To the extent a second power is created or has property
10 subjected to it by the exercise of a first power, subsection (1)
11 does not apply to any future interest created by exercise of the
12 second power if the instrument exercising the first power to
13 subject property to or create the second power expressly declares
14 that subsection (1) does not apply to any future interest created
15 by exercise of the second power or, if the second power is a
16 nonfiduciary power, otherwise clearly indicates that the donee of
17 the first power intends to spring the so-called Delaware tax trap
18 by subjecting property to or creating the second power. For
19 purposes of an express declaration that subsection (1) does not
20 apply, subsection (1) may be referred to as the anti-Delaware-tax-
21 trap provision of the personal property trust perpetuities act.

22 (3) As used in this ~~act~~ section:

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

25 (b) "First power" means a nonfiduciary, nongeneral power of
26 appointment over personal property held in trust that is exercised
27 so as to subject the property to, or to create, another power of
28 appointment.

29 (c) "Nonfiduciary" means, with respect to a power of

1 appointment, that the power of appointment is not held by a trustee
2 in a fiduciary capacity.

3 (d) "Second-order fiduciary power" means a fiduciary power of
4 appointment that is created or has property subjected to it by the
5 exercise of 1 of the following:

6 (i) A first power.

7 (ii) A fiduciary power of appointment that was created or had
8 property subjected to it by the exercise of a first power.

9 (iii) A fiduciary power of appointment whose creation or control
10 over property subject to the power is traceable through ~~a~~**an**
11 **unbroken** succession of previous exercises of fiduciary powers to
12 the exercise of a fiduciary power that was created or had property
13 subjected to it by the exercise of a first power.

14 (e) "Second power" means a power of appointment over personal
15 property held in trust, other than a presently exercisable general
16 power, that is created or to which property is subjected by the
17 exercise of either a first power or a second-order fiduciary power.

18 (f) "Uniform statutory rule against perpetuities" means the
19 uniform statutory rule against perpetuities, 1988 PA 418, MCL
20 554.71 to 554.78.

21 Sec. 3. (1) Except as provided in ~~subsection (3),~~**section 2,**
22 an interest in, or power of appointment over, personal property
23 held in trust is not invalidated by a rule against any of the
24 following:

25 (a) Perpetuities.

26 (b) Suspension of absolute ownership.

27 (c) Suspension of the power of alienation.

28 (d) Accumulations of income.

29 (2) Except as provided in ~~subsection (3),~~**section 2,** all of

the following may be indefinitely suspended, postponed, or allowed to go on with respect to personal property held in trust:

(a) The vesting of a future interest.

(b) The satisfaction of a condition precedent to the exercise of a general power of appointment.

(c) The exercise of a nongeneral or testamentary power of appointment.

(d) Absolute ownership.

(e) The power of alienation.

(f) Accumulations of income.

~~(3) The period during which the vesting of a future interest in property may be postponed by the exercise of a second power shall be determined under the uniform statutory rule against perpetuities 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, general power of appointment not presently exercisable because of a condition precedent, or 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.~~

Sec. 4. (1) This act applies only to a nonvested interest in, or power of appointment over, personal property 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.

(2) For purposes of this section, ~~a both of the following~~

1 apply:

2 (a) A trust that is created by the exercise of a power of
3 appointment is created when the power has been irrevocably
4 exercised or when a revocable exercise becomes irrevocable.

5 (b) A trust is a ~~special appointee trust~~ "**special appointee**
6 **trust**" to the extent it includes assets that were held in a trust
7 that was irrevocable on September 25, 1985, ~~if~~ **and** both of the
8 following apply to the assets:

9 (i) ~~(a)~~ The assets have continuously been held in trust since
10 September 25, 1985.

11 (ii) ~~(b)~~ The assets have not become subject to a general power
12 of appointment since September 25, 1985.