

HOUSE BILL NO. 4619

April 13, 2021, Introduced by Reps. Haadsma, Cambensy, Tyrone Carter, Hope, Coleman, Breen, Witwer and Wozniak and referred to the Committee on Financial Services.

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

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

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

12 (2) To the extent a second power is created or has property
13 subjected to it by the exercise of a first power, subsection (1)
14 does not apply to any future interest created by exercise of the
15 second power if both of the following apply:

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

19 (b) The instrument exercising the first power to subject
20 property to or create the second power expressly declares that
21 subsection (1) does not apply to any future interest created by
22 exercise of the second power or, if the second power is a
23 nonfiduciary power, otherwise clearly indicates that the donee of
24 the first power intends to spring the so-called Delaware tax trap
25 by subjecting property to or creating the second power. For
26 purposes of an express declaration that subsection (1) does not
27 apply, subsection (1) may be referred to as the anti-Delaware-tax-
28 trap provision of the personal property trust perpetuities act.

29 (3) As used in this ~~act~~-section:

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

3 (b) "First power" means a nonfiduciary, nongeneral power of
4 appointment over personal property held in trust that is exercised
5 so as to subject the property to, or to create, another power of
6 appointment.

7 (c) "Nonexcluded first power" means a first power any future
8 interest created by the exercise of which is subject to subsection
9 (1) because the power was itself created or augmented by the
10 exercise of a nonfiduciary, nongeneral power of appointment and the
11 election described in subsection (2) was not made by the donor of
12 the power.

13 (d) "Nonexcluded second-order fiduciary power" means a second-
14 order fiduciary power that is created or has property subjected to
15 it by the exercise of 1 of the following:

16 (i) A nonexcluded first power.

17 (ii) A fiduciary power of appointment that was created or had
18 property subjected to it by the exercise of a nonexcluded first
19 power.

20 (iii) A fiduciary power of appointment whose creation or control
21 over property subject to the power is traceable through an unbroken
22 succession of previous exercises of fiduciary powers to the
23 exercise of a fiduciary power that was created or had property
24 subjected to it by the exercise of a nonexcluded first power.

25 (e) ~~(e)~~—"Nonfiduciary" means, with respect to a power of
26 appointment, that the power of appointment is not held by a trustee
27 in a fiduciary capacity.

28 (f) ~~(d)~~—"Second-order fiduciary power" means a fiduciary power
29 of appointment that is created or has property subjected to it by

1 the exercise of 1 of the following:

2 (i) A first power.

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

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

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

15 (h) ~~(f)~~ "Uniform statutory rule against perpetuities" means
16 the uniform statutory rule against perpetuities, 1988 PA 418, MCL
17 554.71 to 554.78.

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

22 (a) Perpetuities.

23 (b) Suspension of absolute ownership.

24 (c) Suspension of the power of alienation.

25 (d) Accumulations of income.

26 (2) Except as provided in ~~subsection (3)~~, **section 2**, all of
27 the following may be indefinitely suspended, postponed, or allowed
28 to go on with respect to personal property held in trust:

29 (a) The vesting of a future interest.

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

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

5 (d) Absolute ownership.

6 (e) The power of alienation.

7 (f) Accumulations of income.

8 ~~(3) The period during which the vesting of a future interest~~
9 ~~in property may be postponed by the exercise of a second power~~
10 ~~shall be determined under the uniform statutory rule against~~
11 ~~perpetuities by reference to the time of the creation of the power~~
12 ~~of appointment that subjected property to, or created, the second~~
13 ~~power. A nonvested interest, general power of appointment not~~
14 ~~presently exercisable because of a condition precedent, or~~
15 ~~nongeneral or testamentary power of appointment created, or to~~
16 ~~which property is subjected, by the exercise of the second power is~~
17 ~~invalid, to the extent of the exercise of the second power, unless~~
18 ~~the interest or power satisfies the uniform statutory rule against~~
19 ~~perpetuities measured from the time of the creation of the power of~~
20 ~~appointment that subjected property to, or created, the second~~
21 ~~power.~~