

**SUBSTITUTE FOR  
HOUSE BILL NO. 4034**

A bill to amend 1988 PA 418, entitled  
"Uniform statutory rule against perpetuities,"  
by amending sections 3, 5, and 6 (MCL 554.73, 554.75, and 554.76),  
section 5 as amended by 2011 PA 11.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 3. (1) Except as provided in subsections (2), (3), and  
2 section 6(1), the time of creation of a nonvested property interest  
3 or a power of appointment ~~shall~~**must** be determined by statutory or  
4 common law.

5       (2) For purposes of this act, if there is a person ~~who~~**that**  
6 alone can exercise a power created by a governing instrument to  
7 become the unqualified beneficial owner of a nonvested property  
8 interest or a property interest subject to a power of appointment



described in section 2(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) ~~For~~ **Except for interests and powers described in section 5(2),** for purposes of this act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

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



1 arrangement that was not subject to the common-law rule against  
2 perpetuities or is excluded by another statute.

3 (f) Except as provided in subsection (2), an interest or power  
4 of appointment to which the personal property trust perpetuities  
5 act, 2008 PA 148, MCL 554.91 to 554.94, applies.

6 (2) Section 2 is applicable to an interest or power of  
7 appointment **created, or to which property is subjected, by the**  
8 **exercise of a second power that is subject to section 2(1) of** the  
9 personal property trust perpetuities act, 2008 PA 148, MCL ~~554.91~~  
10 ~~to 554.94, applies if the interest or power was created, or~~  
11 ~~property was made subject to the interest or power, by the exercise~~  
12 ~~of a second power.~~ **554.92.** If section 2 is applicable to an  
13 interest or power under this subsection, it applies only to the  
14 extent of the exercise of the second power, and instead of using a  
15 period of 90 years to determine whether section 2(1)(b), (2)(b), or  
16 (3)(b) is satisfied, or whether to reform a disposition under  
17 section 4, a period of 360 years ~~shall~~ **must** be used.

18 (3) As used in this section, "second power" means that term as  
19 defined in section 2 of the personal property trust perpetuities  
20 act, 2008 PA 148, MCL 554.92.

21 Sec. 6. (1) ~~This~~ **Except as provided in subsection (2), this**  
22 act applies to a nonvested property interest or a power of  
23 appointment that is created ~~on or after the effective date of this~~  
24 ~~act.~~ **December 26, 1988.** For purposes of this section, a nonvested  
25 property interest or power of appointment created by the exercise  
26 of a power of appointment is created when the power has been  
27 irrevocably exercised or when a revocable exercise becomes  
28 irrevocable.

29 (2) If a nonvested property interest or a power of appointment



1 was created before ~~the effective date of this act~~ **December 27, 1988**  
2 and is determined in a judicial proceeding, commenced ~~on or after~~  
3 ~~the effective date of this act,~~ **December 26, 1988,** to violate the  
4 rule against perpetuities as it existed before ~~the effective date~~  
5 ~~of this act,~~ **December 27, 1988,** a court, ~~upon~~ **on** the petition of an  
6 interested person, may reform the disposition in the manner that  
7 most closely approximates the transferor's manifested plan of  
8 distribution and is within the limits of the rule against  
9 perpetuities applicable when the nonvested property interest or  
10 power of appointment was created.