

SUBSTITUTE FOR
HOUSE BILL NO. 4602

A bill to amend 1988 PA 418, entitled
"Uniform statutory rule against perpetuities,"
by amending sections 2 and 5 (MCL 554.72 and 554.75).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) ~~A-SUBJECT TO SECTION 5, A~~ nonvested property
2 interest is invalid unless 1 or more of the following are
3 applicable to the interest:

4 (a) When the interest is created, it is certain to vest or
5 terminate no later than 21 years after the death of an individual
6 then alive.

7 (b) The interest either vests or terminates within 90 years
8 after its creation.

9 (2) ~~A-SUBJECT TO SECTION 5, A~~ general power of appointment not
10 presently exercisable because of a condition precedent is invalid

1 unless 1 or more of the following are applicable to the power:

2 (a) When the power is created, the condition precedent is
3 certain either to be satisfied or become impossible to satisfy no
4 later than 21 years after the death of an individual then alive.

5 (b) The condition precedent either is satisfied or becomes
6 impossible to satisfy within 90 years after its creation.

7 (3) ~~A~~**SUBJECT TO SECTION 5, A** nongeneral power of appointment
8 or a general testamentary power of appointment is invalid unless 1
9 or more of the following are applicable to the power:

10 (a) When the power is created, it is certain to be irrevocably
11 exercised or otherwise to terminate no later than 21 years after
12 the death of an individual then alive.

13 (b) The power is irrevocably exercised or otherwise terminates
14 within 90 years after its creation.

15 (4) In determining whether a nonvested property interest or a
16 power of appointment is valid under subsection (1)(a), (2)(a), or
17 (3)(a), the possibility that a child will be born to an individual
18 after the individual's death is disregarded.

19 (5) **IF, IN MEASURING A PERIOD FROM THE CREATION OF A TRUST OR**
20 **OTHER PROPERTY ARRANGEMENT THAT WAS IRREVOCABLE ON SEPTEMBER 25,**
21 **1985, LANGUAGE IN AN INSTRUMENT GOVERNING THE EFFECT OF AN EXERCISE**
22 **OF A POWER OF APPOINTMENT OVER PROPERTY EXEMPT FROM FEDERAL**
23 **GENERATION SKIPPING TRANSFER TAX (A) SEEKS TO DISALLOW THE VESTING**
24 **OR TERMINATION OF ANY INTEREST OR TRUST BEYOND, (B) SEEKS TO**
25 **POSTPONE THE VESTING OR TERMINATION OF ANY INTEREST OR TRUST UNTIL,**
26 **OR (C) SEEKS TO OPERATE IN EFFECT IN ANY SIMILAR FASHION UPON, THE**
27 **LATER OF (i) THE EXPIRATION OF A PERIOD OF TIME ENDING WITH, OR NOT**

1 EXCEEDING 21 YEARS AFTER, THE DEATH OF THE SURVIVOR OF SPECIFIED
2 LIVES IN BEING AT THE CREATION OF THE TRUST OR OTHER PROPERTY
3 ARRANGEMENT OR (ii) THE EXPIRATION OF A PERIOD OF TIME THAT EXCEEDS
4 OR MIGHT EXCEED 21 YEARS AFTER THE DEATH OF THE SURVIVOR OF LIVES
5 IN BEING AT THE CREATION OF THE TRUST OR OTHER PROPERTY
6 ARRANGEMENT, THAT LANGUAGE IS INOPERATIVE TO THE EXTENT IT PRODUCES
7 A PERIOD OF TIME THAT EXCEEDS 21 YEARS AFTER THE DEATH OF THE
8 SURVIVOR OF THE SPECIFIED LIVES.

9 Sec. 5. (1) Section 2 ~~shall~~ DOES not apply to any of the
10 following:

11 (a) A nonvested property interest or a power of appointment
12 arising out of a nondonative transfer, except a nonvested property
13 interest or a power of appointment arising out of a premarital or
14 postmarital agreement; a separation or divorce settlement; a
15 spouse's election; a similar arrangement arising out of a
16 prospective, existing, or previous marital relationship between the
17 parties; a contract to make or not to revoke a will or trust; a
18 contract to exercise or not to exercise a power of appointment; a
19 transfer in satisfaction of a duty of support; or a reciprocal
20 transfer.

21 (b) A fiduciary's power relating to the administration or
22 management of assets, including the power of a fiduciary to sell,
23 lease, or mortgage property, and the power of a fiduciary to
24 determine principal and income.

25 (c) A power to appoint a fiduciary.

26 (d) A discretionary power of a trustee to distribute principal
27 before termination of a trust to a beneficiary having an

1 indefeasibly vested interest in the income and principal.

2 (e) A property interest, power of appointment, or any other
3 arrangement that was not subject to the common-law rule against
4 perpetuities or is excluded by another statute.

5 (F) EXCEPT AS PROVIDED IN SUBSECTION (2), AN INTEREST IN, OR
6 POWER OF APPOINTMENT OVER, PERSONAL PROPERTY HELD IN A TRUST THAT
7 IS EITHER REVOCABLE ON OR CREATED AFTER THE EFFECTIVE DATE OF THE
8 PERSONAL PROPERTY TRUST PERPETUITIES ACT.

9 (2) SECTION 2 IS APPLICABLE TO AN INTEREST IN, OR POWER OF
10 APPOINTMENT OVER, PERSONAL PROPERTY HELD IN TRUST IF THE INTEREST
11 OR POWER WAS CREATED, OR PROPERTY WAS MADE SUBJECT TO THE INTEREST
12 OR POWER, BY THE EXERCISE OF A SECOND POWER. IF SECTION 2 IS
13 APPLICABLE TO AN INTEREST OR POWER UNDER THIS SUBSECTION, IT
14 APPLIES ONLY TO THE EXTENT OF THE EXERCISE OF THE SECOND POWER, AND
15 INSTEAD OF USING A PERIOD OF 90 YEARS TO DETERMINE WHETHER SECTION
16 2(1)(B), (2)(B), OR (3)(B) IS SATISFIED, OR WHETHER TO REFORM A
17 DISPOSITION UNDER SECTION 4, A PERIOD OF 360 YEARS SHALL 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.

21 Enacting section 1. This amendatory act does not take effect
22 unless House Bill No. 5909 of the 94th Legislature is enacted into
23 law.