

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

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

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

10 Sec. 5. (1) Section 2 does not apply to any of the 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
28 indefeasibly vested interest in the income and principal.

29 (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.