

**House Bill 5647 as introduced  
First Analysis (3-26-98)**

**Sponsor: Rep. Larry DeVuyst  
Committee: Commerce**

***THE APPARENT PROBLEM:***

According to the Michigan Law Revision Commission, the common law rule against perpetuities evolved over a 200-year period that culminated in the seventeenth century with the 21-years-plus-lives-in-being rule. The rule was designed as a restraint on the power of a landowner to create nonvested interests in property; that is, to tie up property in long-term or even perpetual family trusts. Under the rule, a nonvested property interest is void unless it is certain at the time of the interest's creation that the interest either will vest or fail to vest during the permitted period.

The National Conference of Commissioners on Uniform State Laws observes that Anglo-American law has traditionally and wisely prohibited people from tying up family property in trust or other property arrangements for the duration not only of an existing generation but for numbers of future generations. The legal rule that prohibits these perpetual or unreasonably long-lasting trusts is called the "rule against perpetuities."

The accepted common law formulation of the rule is as follows: "No [nonvested property] interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest."

The common law rule against perpetuities appears simple, but it has evolved into a kind of conundrum in its application. Improperly drafted deeds, trusts, instruments, and wills can result in invalid future interests. These are frequently interests that should not be extinguished, and people are injured as a result. Shorn of its complexities, the common law rule of perpetuities functions to impose a time limit on trusts. What is the time limit? The time limit thought appropriate is one basically geared to the duration of an existing generation (which can be an existing generation more remote than the one immediately below the person creating the trust), with an extra

tack-on period of 21 years for good measure. Specifically, the rule against perpetuities measures the time limit by the period of "lives in being plus 21 years." The term "lives in being" is the law's arcane way of referring to the lifetimes of persons who were living when the trust was created. In addition, an outside limit for vesting is imposed: 90 years.

Nonetheless, in the application of the rule against perpetuities, there has been confusion as to whether the limits apply to hypothetical possibilities or actual possibilities. Consequently, a uniform statutory rule that is proposed adopts what has become known as the "wait and see" approach, what some acknowledge to be the principal reform of the common law rule. Rather than invalidating future interest based on hypothetical possibilities, the uniform statutory rule provides a period of time within which an interest can actually vest. If it does, it is saved. If it does not, then it is invalid. We wait and see, in other words, if an interest will, in fact, vest.

Some argue that a perpetuity reform statute is needed that, in effect, extends the benefits of a perpetuity savings clause to citizens whose lawyers, through mistake or ignorance, neglected to put one in. Others argue further, that a law that is uniform from state-to-state is desirable since there is so much mobility across generations among families. A professor at the University of Michigan Law School has drafted a statute for the National Conference of Commissioners on Uniform State Laws, and the conference recommends the uniform statute to state legislatures throughout the nation.

***THE CONTENT OF THE BILL:***

House Bill 5647 would amend the Uniform Statutory Rule Against Perpetuities Act, which governs property conveyance, and which sets limiting conditions that make property interest valid. The bill specifies that the language of a trust or other property arrangement

would be inoperative, if it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives in being at the creation of the trust.

MCL 554.72

### **BACKGROUND INFORMATION:**

This bill is one of several recommended to the Michigan legislature by the Michigan Law Revision Commission, in order to update and to recodify bodies of law, including for example, the Uniform Commercial Code.

The National Conference of Commissioners on Uniform State Laws was created in 1892. The conference identifies outmoded statutes, substantiates its recommendations to eliminate those statutes with scholarly research, and then drafts uniform up-dated statutes. The updated "tentative" statutes are drafted over several years, allowing for ample review, argument, and revision. Revisions of the drafts are facilitated through a network of linkages constituted by scholars and practitioners who serve as members of the law sections of the federal and local bar associations, as well as those who serve as volunteer commissioners in state-level review commissions. These contexts provide an opportunity for stakeholders to study unacceptable statutes in light of emerging legal doctrines. The conference proposes the new statutes, first to the law sections, and then to the entirety of the American Bar Association for review by scholars, teachers of law, and legal practitioners. Once endorsed by the American Bar Association, the uniform statutes are disseminated to a network of state-level Uniform Law Commissions (for example the Michigan Law Revision Commission), whose members review the proposals once again, and then in some instances recommend their introduction as bills in the state legislatures.

According to the conference, since its organization, the conference has drafted more than 200 uniform laws on many subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act and the Uniform Limited Partnership Act. Beginning in 1940, the conference made a significant decision to attack major commercial problems with comprehensive legal solutions--a decision that set in

motion the project to produce the Uniform Commercial Code. The code took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the conference. Today the conference is recognized primarily for its work in commercial law, family law, probate and estates, law of business organizations, health law, and conflicts in law. It rarely drafts law that is regulatory in character.

In Michigan, the Law Revision Commission has issued more than 30 annual reports, although the commission was created by statute in 1986 (MCL 4.1401). Each year the commission issues a report to describe the topics of its study reports, and to recommend statutes. Some statutes are enacted into law. Under its enabling statute, section 401 of Public Act 268 of 1986, the commission's membership is: four legislators to be bicameral and bipartisan, the director of the Legislative Service Bureau (or designee), and four members appointed by the Legislative Council. The Legislative Council designates the chair. The commission's reports are available at its Web Site, <http://www.dcl.edu>.

### **FISCAL IMPLICATIONS:**

Fiscal information is not available.

### **ARGUMENTS:**

#### **For:**

The National Conference of Commissioners on Uniform State Laws, citing the merits of this bill, observes that it: fine tunes the rule against perpetuities so that it reaches only its real target, that of placing an outer time limit on long-term or perpetual trusts while validating reasonable trusts; extends the benefits of a perpetuity savings clause to trust clients whose lawyers neglected to put one in; is simple to administer; requires no new learning of the bar; and would nearly eliminate perpetuity litigation.

#### **For:**

A uniform reform of the common law rule against perpetuities is especially desirable, mainly because of the high degree of mobility in American society. Many people retire to states other than the one in which they lived during their employment years. Many others own land in states other than the state of their primary residence. Many trusts confer a power of appointment upon children or grandchildren who might live in different states when they exercise their power. These and other sometimes unplanned for

post-execution events can give rise to increased conflict-of-laws litigation. This bill would help to promote uniformity among the states, and is in the best interest of attorneys' increasingly mobile clientele.

***POSITIONS:***

The National Conference of Commissioners on Uniform State Laws proposed the enactment of the bill.

The Michigan Bankers Association supports the bill.  
(3-25-98)

Analyst: J. Hunault

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.