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BILL ANALYSIS

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House Bills 6365 and 6366 (as passed by the House)
Sponsor: Representative Tonya Schuitmaker
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-5-06

CONTENT

House Bill 6365 would amend Public Act 38 of 1949, which incorporates the common law rule against perpetuities (described in BACKGROUND, below), to abolish the rule beginning January 1, 2007, and to repeal the Uniform Statutory Rule Against Perpetuities Act.

House Bill 6366 would amend the Estates and Protected Individuals Code to delete a provision under which a 120-hour survival requirement does not apply if it would invalidate a nonvested property interest or a power of appointment under the Uniform Statutory Rule Against Perpetuities Act.

Specifically, under the Estates and Protected Individuals Code, an individual who is not established by clear and convincing evidence to have survived an event, including the death of another person, by 120 hours is considered to have predeceased the event. This does not apply, however, if it would cause a nonvested property interest or a power of appointment to be or become invalid under the Uniform Statutory Rule Against Perpetuities Act (described below). The bill would delete that exception.

The bills are tie-barred and would take effect on January 1, 2007.

MCL 554.53 (H.B. 6365)
700.2702 & 700.2722 (H.B. 6366)

BACKGROUND

Under the common law rule against perpetuities, a nonvested interest in property is not valid unless it must vest, if at all, not later than 21 years, plus the period of gestation, after some life or lives in being at the time the interest is created. (A nonvested interest is an interest to which the transferee is not presently entitled and might never become entitled.) The Uniform Statutory Rule Against Perpetuities Act was enacted in 1988 to provide an alternative rule under which an interest that is valid under the common law rule continues to be valid, but an interest that violates the common law rule is invalid only if it does not vest or terminate within 90 years after its creation. Under the common law rule, the validity of a nonvested interest depends on the certainty at the time of the interest's creation that the interest will vest or fail to vest during the permitted period. The statutory rule, on the other hand, takes a "wait and see" approach, based on actual events that occur during a 90-year postcreation period, to determining whether a nonvested property interest is valid.

Under the Act, a nonvested property interest is invalid unless one or both of the following apply:

- When the interest is created, it is certain to vest or terminate not later than 21 years after the death of an individual alive at the time of the interest's creation.
- The interest either vests or terminates within 90 years after its creation.

The Act also provides that a general power of appointment not presently exercisable because of a condition precedent is invalid unless one or both of the following are satisfied:

- When the power is created, the condition precedent is certain either to be satisfied or to become impossible to satisfy not later than 21 years after the death of an individual alive at the time of the power's creation.
- The condition precedent either is satisfied or becomes impossible to satisfy within 90 days after its creation.

(A power of appointment is authority conferred upon a person to select the recipient of an interest in property. If it is a general power, the person may select whomever he or she chooses. A condition precedent is a condition or event that must happen or be performed before a right may be exercised—in this case, the right to exercise the power of appointment.)

In addition, under the Act, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless one or both of the following apply:

- When the power is created, it is certain to be irrevocably exercised or otherwise to terminate not later than 21 years after the death of an individual alive at the time of the power's creation.
- The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(A power of appointment is nongeneral if the instrument creating it restricts the people who may be appointed to receive the interest. A power of appointment is testamentary if it is created by will.)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. The tax implications of the bills are uncertain.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.