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BILL ANALYSIS



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Senate Bill 721 (Substitute S-1 as reported)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

CONTENT

The bill would amend the Personal Property Trust and Perpetuities Act to modify provisions regarding the determination of the period during which vesting of a future interest in property may be postponed.

The Act specifies that the period during which the vesting of a future interest in property may be postponed by the exercise of a second power is determined under the uniform statutory rule against perpetuities by reference to the time of the creation of the power of appointment that subjected property to, or created, the second power. A nonvested interest, a general power of appointment not presently exercisable because of a condition precedent, or a nongeneral or testamentary power of appointment created, or to which property is subjected, by the exercise of the second power is invalid, to the extent of the exercise of the second power unless the interest or power satisfies the uniform statutory rule against perpetuities measured from the time of the creation of the power of appointment that subjected property to, or created, the second power.

Under the bill, these provisions would apply *except* as provided below.

To the extent a second power was created or had property subjected to it by the exercise of a first power, the postponement of vesting of future interests provisions described above would not apply to any future interest created by exercise of the second power if both of the following applied:

- The first power was not itself created or augmented by the exercise of either a nonexcluded first power or a nonexcluded second-order fiduciary power.
- The instrument exercising the first power to subject property to or create the second power expressly declared that the above provisions did not apply to any future interest created by exercise of the second power or, if the second power were a nonfiduciary power, otherwise clearly indicated that the donee of the first power intended to spring the so-called Delaware tax trap by subjecting property to or creating the second power.

For purposes of an express declaration that the postponement of vesting of future interests provision described above does not apply, that provision could be referred to as the anti-Delaware-tax-trap provision of the Act.

MCL 554.93 et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Date Completed: 12-3-20

Fiscal Analyst: Michael Siracuse

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Bill Analysis @ www.senate.michigan.gov/sfa

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