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BILL ANALYSIS



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Senate Bill 721 (as introduced 1-15-20)
Sponsor: Senator Peter J. Lucido
Committee: Judiciary and Public Safety

Date Completed: 11-19-20

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.

Definitions

Under the Act, "fiduciary" means, with respect to a power of appointment, that the power is held by a trustee in a fiduciary capacity.

"First power" means a nonfiduciary, nongeneral power of appointment over personal property held in trust that is exercised so as to subject the property to, or to create, another power of appointment.

"Nonfiduciary" means, with respect to a power of appointment, that the power of appointment is not held by a trustee in a fiduciary capacity.

"Second-order fiduciary power" means a fiduciary power of appointment that is created or has property subjected to it by the exercise of one of the following:

- A first power.
- A fiduciary power of appointment that was created or had property subjected to it by the exercise of a first power.
- A fiduciary power of appointment whose creation or control over property subject to the power is traceable through a succession of previous exercises of fiduciary powers to the exercise of a fiduciary power that was created or had property subjected to it by the exercise of a first power.

"Second power" means a power of appointment over personal property held in trust, other than a presently exercisable general power, that is created or to which property is subjected by the exercise of either a first power or a second-order fiduciary power.

"Uniform statutory rule against perpetuities" means the Uniform Statutory Rule Against Perpetuities.

Postponement of Vesting of a Future Interest

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 exercise of a first power, the postponement of vesting of future interests provisions described above would not apply to interests or powers 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 first power or a 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 interests and powers created by exercise of the second power.

For purposes of the declaration described above, the postponement of vesting of future interests provisions described above 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.

Fiscal Analyst: Michael Siracuse

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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.