

**SUBSTITUTE FOR
SENATE BILL NO. 721**

A bill to amend 2008 PA 148, entitled
"Personal property trust perpetuities act,"
by amending sections 2 and 3 (MCL 554.92 and 554.93), as amended by
2012 PA 484.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. (1) Except as provided in subsection (2), the period
2 during which the vesting of a future interest in property may be
3 postponed by the exercise of a second power is determined under the
4 uniform statutory rule against perpetuities by reference to the
5 time of the creation of the power of appointment that subjected
6 property to, or created, the second power. Except as provided in
7 subsection (2), a nonvested interest, a general power of
8 appointment not presently exercisable because of a condition



1 precedent, or a nongeneral or testamentary power of appointment
 2 created, or to which property is subjected, by the exercise of the
 3 second power is invalid to the extent of the exercise of the second
 4 power unless the interest or power satisfies the uniform statutory
 5 rule against perpetuities measured from the time of the creation of
 6 the power of appointment that subjected property to, or created,
 7 the second power.

8 (2) To the extent a second power is created or has property
 9 subjected to it by the exercise of a first power, subsection (1)
 10 does not apply to any future interest created by exercise of the
 11 second power if both of the following apply:

12 (a) The first power was not itself created or augmented by the
 13 exercise of either a nonexcluded first power or a nonexcluded
 14 second-order fiduciary power.

15 (b) The instrument exercising the first power to subject
 16 property to or create the second power expressly declares that
 17 subsection (1) does not apply to any future interest created by
 18 exercise of the second power or, if the second power is a
 19 nonfiduciary power, otherwise clearly indicates that the donee of
 20 the first power intends to spring the so-called Delaware tax trap
 21 by subjecting property to or creating the second power. For
 22 purposes of an express declaration that subsection (1) does not
 23 apply, subsection (1) may be referred to as the anti-Delaware-tax-
 24 trap provision of the personal property trust perpetuities act.

25 (3) As used in this ~~act~~ section:

26 (a) "Fiduciary" means, with respect to a power of appointment,
 27 that the power is held by a trustee in a fiduciary capacity.

28 (b) "First power" means a nonfiduciary, nongeneral power of
 29 appointment over personal property held in trust that is exercised



1 so as to subject the property to, or to create, another power of
2 appointment.

3 (c) "Nonexcluded first power" means a first power any future
4 interest created by the exercise of which is subject to subsection
5 (1) because the power was itself created or augmented by the
6 exercise of a nonfiduciary, nongeneral power of appointment and the
7 election described in subsection (2) was not made by the donor of
8 the power.

9 (d) "Nonexcluded second-order fiduciary power" means a second-
10 order fiduciary power that is created or has property subjected to
11 it by the exercise of 1 of the following:

12 (i) A nonexcluded first power.

13 (ii) A fiduciary power of appointment that was created or had
14 property subjected to it by the exercise of a nonexcluded first
15 power.

16 (iii) A fiduciary power of appointment whose creation or control
17 over property subject to the power is traceable through an unbroken
18 succession of previous exercises of fiduciary powers to the
19 exercise of a fiduciary power that was created or had property
20 subjected to it by the exercise of a nonexcluded first power.

21 (e) ~~(e)~~—"Nonfiduciary" means, with respect to a power of
22 appointment, that the power of appointment is not held by a trustee
23 in a fiduciary capacity.

24 (f) ~~(d)~~—"Second-order fiduciary power" means a fiduciary power
25 of appointment that is created or has property subjected to it by
26 the exercise of 1 of the following:

27 (i) A first power.

28 (ii) A fiduciary power of appointment that was created or had
29 property subjected to it by the exercise of a first power.



1 (iii) A fiduciary power of appointment whose creation or control
 2 over property subject to the power is traceable through ~~a~~**an**
 3 **unbroken** succession of previous exercises of fiduciary powers to
 4 the exercise of a fiduciary power that was created or had property
 5 subjected to it by the exercise of a first power.

6 (g) ~~(e)~~—"Second power" means a power of appointment over
 7 personal property held in trust, other than a presently exercisable
 8 general power, that is created or to which property is subjected by
 9 the exercise of either a first power or a second-order fiduciary
 10 power.

11 (h) ~~(f)~~—"Uniform statutory rule against perpetuities" means
 12 the uniform statutory rule against perpetuities, 1988 PA 418, MCL
 13 554.71 to 554.78.

14 Sec. 3. (1) Except as provided in ~~subsection (3)~~, **section 2**,
 15 an interest in, or power of appointment over, personal property
 16 held in trust is not invalidated by a rule against any of the
 17 following:

- 18 (a) Perpetuities.
- 19 (b) Suspension of absolute ownership.
- 20 (c) Suspension of the power of alienation.
- 21 (d) Accumulations of income.

22 (2) Except as provided in ~~subsection (3)~~, **section 2**, all of
 23 the following may be indefinitely suspended, postponed, or allowed
 24 to go on with respect to personal property held in trust:

- 25 (a) The vesting of a future interest.
- 26 (b) The satisfaction of a condition precedent to the exercise
 27 of a general power of appointment.
- 28 (c) The exercise of a nongeneral or testamentary power of
 29 appointment.



1 (d) Absolute ownership.

2 (e) The power of alienation.

3 (f) Accumulations of income.

4 ~~(3) The period during which the vesting of a future interest~~
5 ~~in property may be postponed by the exercise of a second power~~
6 ~~shall be determined under the uniform statutory rule against~~
7 ~~perpetuities by reference to the time of the creation of the power~~
8 ~~of appointment that subjected property to, or created, the second~~
9 ~~power. A nonvested interest, general power of appointment not~~
10 ~~presently exercisable because of a condition precedent, or~~
11 ~~nongeneral or testamentary power of appointment created, or to~~
12 ~~which property is subjected, by the exercise of the second power is~~
13 ~~invalid, to the extent of the exercise of the second power, unless~~
14 ~~the interest or power satisfies the uniform statutory rule against~~
15 ~~perpetuities measured from the time of the creation of the power of~~
16 ~~appointment that subjected property to, or created, the second~~
17 ~~power.~~

