

**SUBSTITUTE FOR
HOUSE BILL NO. 4864**

A bill to amend 1988 PA 418, entitled
"Uniform statutory rule against perpetuities,"
by amending sections 3 and 5 (MCL 554.73 and 554.75), section 5 as
amended by 2011 PA 11.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Except as provided in subsections (2), (3), and
2 section 6(1), the time of creation of a nonvested property interest
3 or a power of appointment ~~shall~~**must** be determined by statutory or
4 common law.

5 (2) For purposes of this act, if there is a person ~~who~~**that**
6 alone can exercise a power created by a governing instrument to
7 become the unqualified beneficial owner of a nonvested property
8 interest or a property interest subject to a power of appointment

1 described in section 2(2) or (3), the nonvested property interest
2 or power of appointment is created when the power to become the
3 unqualified beneficial owner terminates.

4 (3) ~~For~~**Except as provided in section 5(2), for** purposes of
5 this act, a nonvested property interest or a power of appointment
6 arising from a transfer of property to a previously funded trust or
7 other existing property arrangement is created when the nonvested
8 property interest or power of appointment in the original
9 contribution was created.

10 Sec. 5. (1) Section 2 does not apply to any of the following:

11 (a) A nonvested property interest or a power of appointment
12 arising out of a nondonative transfer, except a nonvested property
13 interest or a power of appointment arising out of a premarital or
14 postmarital agreement; a separation or divorce settlement; a
15 spouse's election; a similar arrangement arising out of a
16 prospective, existing, or previous marital relationship between the
17 parties; a contract to make or not to revoke a will or trust; a
18 contract to exercise or not to exercise a power of appointment; a
19 transfer in satisfaction of a duty of support; or a reciprocal
20 transfer.

21 (b) A fiduciary's power relating to the administration or
22 management of assets, including the power of a fiduciary to sell,
23 lease, or mortgage property, and the power of a fiduciary to
24 determine principal and income.

25 (c) A power to appoint a fiduciary.

26 (d) A discretionary power of a trustee to distribute principal
27 before termination of a trust to a beneficiary having an
28 indefeasibly vested interest in the income and principal.

29 (e) A property interest, power of appointment, or any other

1 arrangement that was not subject to the common-law rule against
2 perpetuities or is excluded by another statute.

3 (f) Except as provided in subsection (2), an interest or power
4 of appointment to which the personal property trust perpetuities
5 act, 2008 PA 148, MCL 554.91 to 554.94, applies.

6 (2) Section 2 is applicable to an interest or power of
7 appointment **created, or** to which **property is subjected, by the**
8 **exercise of a second power that is subject to section 2(1) of** the
9 personal property trust perpetuities act, 2008 PA 148, MCL ~~554.91~~
10 ~~to 554.94, applies if the interest or power was created, or~~
11 ~~property was made subject to the interest or power, by the exercise~~
12 ~~of a second power.~~ **554.92.** If section 2 is applicable to an
13 interest or power under this subsection, it applies only to the
14 extent of the exercise of the second power, and instead of using a
15 period of 90 years to determine whether section 2(1)(b), (2)(b), or
16 (3)(b) is satisfied, or whether to reform a disposition under
17 section 4, a period of 360 years ~~shall~~ **must** be used.

18 (3) As used in this section, "second power" means that term as
19 defined in section 2 of the personal property trust perpetuities
20 act, 2008 PA 148, MCL 554.92.

21 Enacting section 1. This amendatory act does not take effect
22 unless House Bill No. 4863 of the 102nd Legislature is enacted into
23 law.