

Legislative Analysis



RULE AGAINST PERPETUITIES

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House Bill 4602 (Substitute H-2)
Sponsor: Rep. Tonya Schuitmaker

House Bill 5909 with House committee amendment
Sponsor: Rep. Andy Meisner
Committee: Judiciary

Complete to 4-8-08

A SUMMARY OF HOUSE BILLS 4602 & 5909 AS REPORTED FROM COMMITTEE

The bills, taken together, would amend one act pertaining to the rule against perpetuities, and create a new act to be known as the "Personal Property Trust Perpetuities Act." In general, a rule against perpetuities seeks to prevent assets from being tied-up in long-term or even perpetual family trusts. The bills are tie-barred to each other so that neither would go into effect unless both were enacted into law.

[In general, the purpose of modifying the Uniform Statutory Rule Against Perpetuities (USRAP) and revising (or repealing) the common law rule against perpetuities (RAP) is to allow wealthy individuals to create perpetual trusts, known as dynasty trusts, to transfer property to successive generations without federal or state taxes.]

House Bill 4602 (H-2) would amend the Uniform Statutory Rule Against Perpetuities (MCL 554.71, 554.72, and 554.75) to specify that the act would not apply to an interest in, or a power of appointment relating to, personal property. The act would therefore apply only to interests in real property. The bill would also delete the word "uniform" in the title of the act and the name (or short title) of the act since it would no longer be identical to the uniform rule drafted by the National Conference of Commissions on Uniform State Laws. The bill is tie-barred to House Bill 5909.

House Bill 5909, as amended, would create a new act to be known as the "Personal Property Trust Perpetuities Act." The bill specifies that an interest in, or power of appointment over, personal property held in trust is not invalidated by a rule against any of the following: perpetuities; suspension of absolute ownership; suspension of the power of alienation; or accumulations of income. Further, except as noted, all of the following may be indefinitely suspended, postponed, or allowed to go on with respect to personal property held in trust:

- The vesting of a future interest.
- The satisfaction of a condition precedent to the exercise of a general power of appointment.
- The exercise of a non-general or testamentary power of appointment.
- Absolute ownership.

- The power of alienation.
- Accumulations of income.

The bill specifies that if a first power is exercised so as to subject the property to, or to create, a second power, the period during which the vesting of a future interest in the property may be postponed shall be determined under the Uniform Statutory Rule Against Perpetuities by reference to the time the first power was created. A non-vested interest, general power of appointment not presently exercisable because of a condition precedent, or non-general 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 first power.

Finally, the bill specifies that it applies only to a non-vested interest in, or power of appointment over, personal property held in a trust that is either revocable on, or created after, the effective date of this legislation.

The bill would define "first power" to mean a non-fiduciary, non-general 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. "Non-fiduciary" means, with respect to a power of appointment, that the power of appointment is not held by a trustee in a fiduciary capacity. "Second power" means a non-fiduciary power of appointment over personal property held in trust that is created or to which property is subjected by the exercise of a first power and that is not a presently exercisable general power. "Uniform statutory rule against perpetuities" means the uniform statutory rule against perpetuities, 1988 PA 418, MCL 554.71 to 553.78.

FISCAL IMPACT:

House Bill 4602 would have an indeterminate fiscal impact on the state and local units of government. It is uncertain what impact, if any, the bill's provisions would have concerning relevant tax revenues. (This information is derived from the analysis of similar legislation in the 2005-06 legislative session, House Bill 6693.) Further fiscal analysis is in process.

POSITIONS:

Greenleaf Trust supports the bills. (3-19-08)

The Michigan Bankers Association supports the bills. (3-19-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.