

SENATE BILL No. 979

February 23, 2012, Introduced by Senators SCHUITMAKER and JONES and referred to the Committee on Judiciary.

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).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "FIDUCIARY" MEANS, WITH RESPECT TO A POWER OF APPOINTMENT,
3 **THAT THE POWER IS HELD BY A TRUSTEE IN A FIDUCIARY CAPACITY.**

4 (B) ~~(a)~~"First power" means a nonfiduciary, nongeneral power
5 of appointment over personal property held in trust that is
6 exercised so as to subject the property to, or to create, another
7 power of appointment.

8 (C) ~~(b)~~"Nonfiduciary" means, with respect to a power of
9 appointment, that the power of appointment is not held by a trustee
10 in a fiduciary capacity.

11 (D) "SECOND-ORDER FIDUCIARY POWER" MEANS A FIDUCIARY POWER OF

1 APPOINTMENT THAT IS CREATED OR HAS PROPERTY SUBJECTED TO IT BY THE
2 EXERCISE OF 1 OF THE FOLLOWING:

3 (i) A FIRST POWER.

4 (ii) A FIDUCIARY POWER OF APPOINTMENT THAT WAS CREATED OR HAD
5 PROPERTY SUBJECTED TO IT BY THE EXERCISE OF A FIRST POWER.

6 (iii) A FIDUCIARY POWER OF APPOINTMENT WHOSE CREATION OR CONTROL
7 OVER PROPERTY SUBJECT TO THE POWER IS TRACEABLE THROUGH A
8 SUCCESSION OF PREVIOUS EXERCISES OF FIDUCIARY POWERS TO THE
9 EXERCISE OF A FIDUCIARY POWER THAT WAS CREATED OR HAD PROPERTY
10 SUBJECTED TO IT BY THE EXERCISE OF A FIRST POWER.

11 (E) ~~(e)~~ "Second power" means a ~~nonfiduciary~~ power of
12 appointment over personal property held in trust, **OTHER THAN A**
13 **PRESENTLY EXERCISABLE GENERAL POWER**, that is created or to which
14 property is subjected by the exercise of **EITHER** a first power ~~and~~
15 ~~that is not a presently exercisable general power.~~ **OR A SECOND-ORDER**
16 **FIDUCIARY POWER.**

17 (F) ~~(d)~~ "Uniform statutory rule against perpetuities" means
18 the uniform statutory rule against perpetuities, 1988 PA 418, MCL
19 554.71 to 554.78.

20 Sec. 3. (1) Except as provided in subsection (3), an interest
21 in, or power of appointment over, personal property held in trust
22 is not invalidated by a rule against any of the following:

23 (a) Perpetuities.

24 (b) Suspension of absolute ownership.

25 (c) Suspension of the power of alienation.

26 (d) Accumulations of income.

27 (2) Except as provided in subsection (3), all of the following

1 may be indefinitely suspended, postponed, or allowed to go on with
2 respect to personal property held in trust:

3 (a) The vesting of a future interest.

4 (b) The satisfaction of a condition precedent to the exercise
5 of a general power of appointment.

6 (c) The exercise of a nongeneral or testamentary power of
7 appointment.

8 (d) Absolute ownership.

9 (e) The power of alienation.

10 (f) Accumulations of income.

11 (3) ~~If a first power is exercised so as to subject the~~
12 ~~property to, or to create, a second power, the~~ **THE** period during
13 which the vesting of a future interest in ~~the~~ property may be
14 postponed by the exercise of ~~the~~ **A** second power shall be determined
15 under the uniform statutory rule against perpetuities by reference
16 to the time **OF THE CREATION OF** the ~~first~~ power ~~was~~ **OF APPOINTMENT**
17 **THAT SUBJECTED PROPERTY TO, OR** created, **THE SECOND POWER**. A
18 nonvested interest, general power of appointment not presently
19 exercisable because of a condition precedent, or nongeneral or
20 testamentary power of appointment created, or to which property is
21 subjected, by the exercise of the second power is invalid, to the
22 extent of the exercise of the second power, unless the interest or
23 power satisfies the uniform statutory rule against perpetuities
24 measured from the time of the creation of the ~~first~~ power **OF**
25 **APPOINTMENT THAT SUBJECTED PROPERTY TO, OR CREATED, THE SECOND**
26 **POWER**.