UNIFORM STATUTORY RULE AGAINST PERPETUITIES

Act 418 of 1988

AN ACT to adopt the uniform statutory rule against perpetuities.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

The People of the State of Michigan enact:

554.71 Short title.

Sec. 1.

This act shall be known and may be cited as the "uniform statutory rule against perpetuities".

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

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554.72 Nonvested property interest; general power of appointment, nongeneral power of appointment, or general testamentary power of appointment; validity; language measuring time period from creation of trust or other property arrangement.

Sec. 2.

(1) Subject to section 5, a nonvested property interest is invalid unless 1 or more of the following are applicable to the interest:

(a) When the interest is created, it is certain to vest or terminate no later than 21 years after the death of an individual then alive.

(b) The interest either vests or terminates within 90 years after its creation.

(2) Subject to section 5, a general power of appointment not presently exercisable because of a condition precedent is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, the condition precedent is certain either to be satisfied or become impossible to satisfy no later than 21 years after the death of an individual then alive.

(b) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

(3) Subject to section 5, a nongeneral power of appointment or a general testamentary power of appointment is invalid unless 1 or more of the following are applicable to the power:

(a) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than 21 years after the death of an individual then alive.

(b) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement that was irrevocable on September 25, 1985, language in an instrument governing the effect of an exercise of a power of appointment over property exempt from federal generation skipping transfer tax (a) seeks to disallow the vesting or termination of any interest or trust beyond, (b) seeks to postpone the vesting or termination of any interest or trust until, or (c) seeks to operate in effect in any similar fashion upon, the later of (i) the expiration of a period of time ending with, or not exceeding 21 years after, the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988 ;-- Am. 2008, Act 149, Imd. Eff. May 28, 2008

554.73 Nonvested property interest or power of appointment; time of creation.

Sec. 3.

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

(2) For purposes of this act, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section 2(2) or (3), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

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554.74 Reforming disposition; petition.

Sec. 4.

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution that is within the 90 years allowed by section 2(1)(b), (2)(b), or (3)(b) and 1 or more of the following are applicable:

(a) A nonvested property interest or a power of appointment becomes invalid under section 2.

(b) A class gift is not but might become invalid under section 2 and the time has arrived when the share of any class member is to take effect in possession or enjoyment.

(c) A nonvested property interest that is not validated by section 2(1)(a) can vest but not within 90 years after its creation.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

554.75 Applicability of MCL 554.72; "second power" defined.

Sec. 5.

(1) Section 2 does not apply to any of the following:

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

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

(c) A power to appoint a fiduciary.

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

(e) A property interest, power of appointment, or any other arrangement that was not subject to the common-

law rule against perpetuities or is excluded by another statute.

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

(2) Section 2 is applicable to an interest or power of appointment to which the personal property trust perpetuities act, 2008 PA 148, MCL 554.91 to 554.94, applies if the interest or power was created, or property was made subject to the interest or power, by the exercise of a second power. If section 2 is applicable to an interest or power under this subsection, it applies only to the extent of the exercise of the second power, and instead of using a period of 90 years to determine whether section 2(1)(b), (2)(b), or (3)(b) is satisfied, or whether to reform a disposition under section 4, a period of 360 years shall be used.

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

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988 ;-- Am. 2008, Act 149, Imd. Eff. May 28, 2008 ;-- Am. 2011, Act 11, Imd. Eff. Mar. 24, 2011

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554.76 Nonvested property interest or power of appointment to which act applicable; violation of rule against perpetuities; reforming disposition.

Sec. 6.

(1) This act applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this act. For purposes of this section, a nonvested property interest or power of appointment created by the exercise of a power of appointment is created when the power has been irrevocably exercised or when a revocable exercise becomes irrevocable.

(2) If a nonvested property interest or a power of appointment was created before the effective date of this act and is determined in a judicial proceeding, commenced on or after the effective date of this act, to violate the rule against perpetuities as it existed before the effective date of this act, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

554.77 Application and construction of act.

Sec. 7.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988

554.78 Conditional effective date.

Sec. 8.

This act shall not take effect unless House Bill No. 5626 of the 84th Legislature is enacted into law.

History: 1988, Act 418, Imd. Eff. Dec. 27, 1988
Compiler's Notes: House Bill No. 5626, referred to in this section, was filed with the Secretary of State December 27, 1988, and became

P.A. 1988, No. 417, Imd. Eff. Dec. 27, 1988.

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