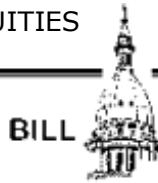




Senate Fiscal Agency
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**BILL ANALYSIS**

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Senate Bill 1518 (as introduced 11-30-06)
Sponsor: Senator Alan L. Cropsey
Committee: Judiciary

Date Completed: 12-5-06

CONTENT

The bill would amend the Uniform Statutory Rule Against Perpetuities Act to exclude personal property from provisions that invalidate nonvested property interests unless certain conditions are met.

Specifically, under Section 2 of the Act, a nonvested property interest is invalid unless one or both of the following apply:

- When the interest is created, it is certain to vest or terminate within 21 years after the death of an individual alive at that time.
- The interest either vests or terminates within 90 years after its creation.

The bill would refer to a nonvested interest in real property, rather than a nonvested property interest.

Section 2 also describes conditions that must be satisfied in order for a power of appointment to be valid. (A power of appointment is the authority to select the recipient of an interest.) The Act identifies specific types of property interests and powers to which Section 2 does not apply. The bill also would exclude an interest in personal property.

MCL 554.72 & 554.75

BACKGROUND

The Uniform Statutory Rule Against Perpetuities Act was enacted in 1988 to provide an alternative to the common law rule against perpetuities, which Michigan law incorporates. Under the common law rule, a nonvested interest in property is not valid unless it must vest, if at all, not later than 21 years, plus the period of gestation, after some life or lives in being at the time of the creation of the interest. (A nonvested interest is an interest to which the transferee is not presently entitled and might never become entitled.)

The common law rule against perpetuities evolved over a 200-year period that culminated in the 17th century with the 21-years-plus-lives-in-being rule. The rule was designed as a restraint on the power of a landowner to create nonvested interests in property; that is, to tie up property in long-term or perpetual family trusts. Because the rule is based on the certainty of an interest to vest or fail to vest at the time of its creation, actual postcreation events are irrelevant. Thus, an interest that is likely to vest and actually would have vested (if allowed) within the period of a life in being plus 21 years is nevertheless invalid if, at the time of the interest's creation, there is any possibility that it will not do so.

The National Conference of Commissioners on Uniform State Laws drafted the Uniform Statutory Rule Against Perpetuities, and the Michigan Law Revision Commission recommended its adoption. The uniform rule takes a "wait and see" approach, based on actual events that occur within a 90-year postcreation period, to determining the validity of a nonvested property interest.

Under the Act, an interest that would be valid under the common law rule continues to be valid. An interest that would violate the common law rule, however, is invalid only if does not vest or terminate within 90 years.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu