

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 83

Short Title: Uniform Rule Against Perp.

(Public)

Sponsors: Senators Hartsell; Soles and Odom.

Referred to: Judiciary II/Election Laws.

January 30, 1995

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 41 of the General Statutes is amended by designating the existing provisions as Article 1, "Survivorship Rights and Future Interests", and by adding a new Article to read:

"ARTICLE 2.

"UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

"§ 41-15. Statutory rule against perpetuities.

(a) A nonvested property interest is invalid unless:

(1) 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; or

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

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

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

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

3 (c) A nongeneral power of appointment or a general testamentary power of
4 appointment is invalid unless:

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

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

10 (d) In determining whether a nonvested property interest or a power of
11 appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the
12 possibility that a child will be born to an individual after the individual's death is
13 disregarded.

14 (e) If, in measuring a period from the creation of a trust or other property
15 arrangement, language in a governing instrument:

16 (1) Seeks to disallow the vesting or termination of any interest or trust
17 beyond,

18 (2) Seeks to postpone the vesting or termination of any interest or trust
19 until, or

20 (3) Seeks to operate in effect in any similar fashion upon,
21 the later of (i) the expiration of a period of time not exceeding 21 years after the death of
22 the survivor of specified lives in being at the creation of the trust or other property
23 arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21
24 years after the death of the survivor of lives in being at the creation of the trust or other
25 property arrangement, that language is inoperative to the extent it produces a period of
26 time that exceeds 21 years after the death of the survivor of the specified lives.

27 **"§ 41-16. When nonvested property interest or power of appointment created.**

28 (a) Except as provided in subsections (b) and (c) of this section and in G.S. 41-
29 19(a), the time for creation of a nonvested property interest or a power of appointment is
30 determined under general principles of property law.

31 (b) For purposes of this Article, if there is a person who alone can exercise a
32 power created by a governing instrument to become the unqualified beneficial owner of
33 (i) a nonvested property interest or (ii) a property interest subject to a power of
34 appointment described in G.S. 41-15(b) or (c), the nonvested property interest or power
35 of appointment is created when the power to become the unqualified beneficial owner
36 terminates.

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

41 **"§ 41-17. Reformation.**

1 Upon the petition of an interested person, a court shall reform a disposition in the
2 manner that most closely approximates the transferor's manifested plan of distribution
3 and is within the 90 years allowed by G.S. 41-15(a)(2), 41-15(b)(2), or 41-15(c)(2) if:

- 4 (1) A nonvested property interest or a power of appointment becomes
5 invalid under G.S. 41-15;
6 (2) A class gift is not invalid under G.S. 41-15, but might become invalid
7 under G.S. 41-15, and the time has arrived when the share of any class
8 is to take effect in possession or enjoyment; or
9 (3) A nonvested property interest that is not validated by G.S. 41-15(a)(1)
10 can vest but not within 90 years after its creation.

11 **"§ 41-18. Exclusions from statutory rule against perpetuities.**

12 G.S. 41-15 does not apply to:

- 13 (1) A nonvested property interest or a power of appointment arising out of a
14 nondonative transfer, except a nonvested property interest or a power of
15 appointment arising out of:
16 a. A premarital or postmarital agreement;
17 b. A separation or divorce settlement;
18 c. A spouse's election;
19 d. A similar arrangement arising out of a prospective, existing, or
20 previous marital relationship between the parties;
21 e. A contract to make or not to revoke a will or trust;
22 f. A contract to exercise or not to exercise a power of appointment;
23 g. A transfer in satisfaction of a duty of support; or
24 h. A reciprocal transfer;
25 (2) A fiduciary's power relating to the administration or management of
26 assets, including the power of a fiduciary to sell, lease, or mortgage
27 property, and the power of a fiduciary to determine principal and
28 income;
29 (3) A power to appoint a fiduciary;
30 (4) A discretionary power of a trustee to distribute principal before
31 termination of a trust to a beneficiary having an indefeasibly vested
32 interest in the income and principal;
33 (5) A nonvested property interest held by a charity, government, or
34 governmental agency or subdivision, if the nonvested property interest
35 is preceded by an interest held by another charity, government, or
36 governmental agency or subdivision;
37 (6) A nonvested property interest in or a power of appointment with respect
38 to a trust or other property arrangement forming part of a pension,
39 profit-sharing, stock bonus, health, disability, death benefit, income
40 deferral, or other current or deferred benefit plan for one or more
41 employees, independent contractors, or their beneficiaries or spouses, to
42 which contributions are made for the purpose of distributing to or for
43 the benefit of the participants or their beneficiaries or spouses the

1 property, income, or principal in the trust or other property arrangement,
2 except a nonvested property interest or a power of appointment that is
3 created by an election of a participant or a beneficiary or spouse; or

4 (7) A property interest, power of appointment, or arrangement that was not
5 subject to the common-law rule against perpetuities or is excluded by
6 another statute of this State.

7 **"§ 41-19. Prospective application.**

8 (a) Except as extended by subsection (b) of this section, this Article applies to a
9 nonvested property interest or a power of appointment that is created on or after October
10 1, 1995. For purposes of this section, a nonvested property interest or a power of
11 appointment is created when the power is irrevocably exercised or when a revocable
12 exercise becomes irrevocable.

13 (b) If a nonvested property interest or a power of appointment was created prior to
14 October 1, 1995, and is determined in a judicial proceeding, commenced on or after
15 October 1, 1995, to violate this State's rule against perpetuities as that rule existed before
16 October 1, 1995, a court upon the petition of an interested person may reform the
17 disposition in the manner that most closely approximates the transferor's manifested plan
18 of distribution and is within the limits of the rule against perpetuities applicable when the
19 nonvested property interest or power of appointment was created.

20 **"§ 41-20. Short title.**

21 This Article may be cited as the Uniform Statutory Rule Against Perpetuities.

22 **"§ 41-21. Uniformity of application and construction.**

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

25 **"§ 41-22. Supersession.**

26 This Article supersedes the rule of the common law known as the rule against
27 perpetuities."

28 Sec. 2. In the event that the 1995 General Assembly enacts a new Article of
29 Chapter 36A of the General Statutes, entitled "Honorary Trusts; Trusts for Pets; Trusts
30 for Cemetery Lots", G.S. 41-18, as enacted by this act, is amended by adding a new
31 subdivision to read:

32 "(8) A property interest or arrangement subjected to a time limit under
33 Article 14 of Chapter 36A, 'Honorary Trusts; Trusts for Pets; Trusts for
34 Cemetery Lots'."

35 The Revisor of Statutes shall relocate the disjunctive "or" and shall correct punctuation as
36 appropriate in the event that G.S. 41-18 is amended as provided in this section.

37 Sec. 3. In the event that the 1995 General Assembly enacts a new Article of
38 Chapter 41 of the General Statutes, entitled "Time Limits on Options in Gross and
39 Certain Other Interests in Land", G.S. 41-18, as enacted by this act, is amended by adding
40 a new subdivision to read:

41 "(9) A property interest or arrangement subjected to a time limit under
42 Article 3 of this Chapter, 'Time Limits on Options in Gross and Certain
43 Other Interests in Land'."

1 The Revisor of Statutes shall relocate the disjunctive "or" and shall correct punctuation as
2 appropriate in the event that G.S. 41-18 is amended as provided in this section.

3 Sec. 4. The Revisor of Statutes shall cause to be printed along with this act all
4 relevant portions of the Official Commentary to the Uniform Statutory Rule Against
5 Perpetuities Act and all explanatory comments of the drafters of this act as the Revisor
6 may deem appropriate.

7 Sec. 5. This act becomes effective October 1, 1995.