

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 190
SENATE BILL 83

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
 - (2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.
- (c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:
- (1) When the power is created, it is certain to be irrevocably exercised or otherwise terminate no later than 21 years after the death of an individual then alive; or
 - (2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.
- (d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.
- (e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument:

- (1) Seeks to disallow the vesting or termination of any interest or trust beyond.
- (2) Seeks to postpone the vesting or termination of any interest or trust until, or
- (3) Seeks to operate in effect in any similar fashion upon.

the later of (i) the expiration of a period of time 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.

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

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

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

(c) For purposes of this Article, 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.

"§ 41-17. Reformation.

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 and is within the 90 years allowed by G.S. 41-15(a)(2), 41-15(b)(2), or 41-15(c)(2) if:

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

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

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

- (1) 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. A premarital or postmarital agreement;
 - b. A separation or divorce settlement;
 - c. A spouse's election;

- d. A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
- e. A contract to make or not to revoke a will or trust;
- f. A contract to exercise or not to exercise a power of appointment;
- g. A transfer in satisfaction of a duty of support; or
- h. A reciprocal transfer;
- (2) 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;
- (3) A power to appoint a fiduciary;
- (4) 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;
- (5) A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;
- (6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or
- (7) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this State.

"§ 41-19. Prospective application.

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

(b) If a nonvested property interest or a power of appointment was created prior to October 1, 1995, and is determined in a judicial proceeding, commenced on or after October 1, 1995, to violate this State's rule against perpetuities as that rule existed before October 1, 1995, 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.

"§ 41-20. Short title.

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

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

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

"§ 41-22. Supersession.

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

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

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

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 7th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives