WEST VIRGINIA CODE CHAPTER 36 ARTICLE 1A

WV Legislature

§36-1A-1. Statutory rule against perpetuities.

(a) Except as provided in subsection (e) of this section, 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) Except as provided in subsection (e) of this section, 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) Except as provided in subsection (e) of this section, 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 to 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 the provisions of this section, the possibility that a child will be born to an individual after the individual’s death is disregarded.

(e) As to any trust created on or after July 1, 2025, this article shall apply to a nonvested property interest or power of appointment contained in a trust by substituting 1,000 years in place of "90 years" in each place such term appears in this article, unless the terms of the trust expressly require that all beneficial interests in the trust vest or terminate within a lesser period.

WV Legislature

§36-1A-2. When nonvested property interest or power of appointment created.

(a) Except as provided in subsections (b) and (c) of this section and in subsection (a), section five of this article, the time of 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 (1) a nonvested property interest or (2) a property interest subject to a power of appointment described in subsections (b) or (c), section one of this article, 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.

(d) For the purposes of this article, if a nongeneral or testamentary power of appointment created for any trust is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such nongeneral or testamentary power of appointment is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

WV Legislature

§36-1A-3. 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 ninety years allowed by the provisions of subdivision (2), subsection (a), or subdivision (2), subsection (b), or subdivision (2), subsection (c), section one of this article and if:

(1) A nonvested property interest or a power of appointment becomes invalid pursuant to the provisions of section one of this article;

(2) A class gift is not but might become invalid pursuant to the provisions of section one of this article and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by the provisions of subdivision (1), subsection (a), section one of this article can vest but not within ninety years after its creation.

WV Legislature

§36-1A-4. Exclusions from statutory rule against perpetuities.

The provisions of section one of this article do 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 provision of this code.

WV Legislature

§36-1A-5. Application.

(a) Except as extended by subsection (c) of this section, this article applies to a nonvested property interest or a power of appointment that is created on or after July 1, 2025. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

(b) This article also applies to a power of appointment that was created before July 1, 2025, but only to the extent that it remains unexercised on July 1, 2025.

(c) If a nonvested property interest or a power of appointment was created before the effective date of this article and is determined in a judicial proceeding, commenced on or after the effective date of this article, to violate this state's rule against perpetuities as that rule existed before the effective date of this article, 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.

WV Legislature

§36-1A-6. Short title.

This article may be cited as the "West Virginia Uniform Statutory Rule Against Perpetuities."

WV Legislature

§36-1A-7. Uniformity of application and construction.

(a) With respect to any matter relating to the validity of an interest within the rule against perpetuities, unless a contrary intent appears in the instrument, as a rule of construction it shall be presumed that the transferor of the interest intended that the interest be valid.

(b) The provisions of 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.

WV Legislature

§36-1A-8. Supersession repeal.

The provisions of this article supersede the rule of the common law known as the rule against perpetuities.

WV Legislature