WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED

Com. Sub. for

HOUSE BILL No. 2261

(By Delegates Love and Wilson)

Passed February 10, 1992

In Effect Ninety Days From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2261
(BY DELEGATES LOVE AND WILSON)

[Passed February 10, 1992; in effect ninety days from passage.]

AN ACT to amend chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-a, relating to a statutory rule against perpetuities; the creation of nonvested property interest or power of appointment; reformation of a disposition; exclusions from rule; prospective application of article and exception; short title; uniformity of application and construction; and supersession.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article one-a, to read as follows:

ARTICLE 1A. UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

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

1 (a) A nonvested property interest is invalid unless:

2 (1) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or
(2) The interest either vests or terminates within ninety 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 twenty-one years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety 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 to terminate no later than twenty-one years after the death of an individual then alive; or

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

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

§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.

§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.

§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;

(7) A property interest, power of appointment, or arrangement that was not subject to the common-law
§36-1A-5. 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 the effective date of this article. 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) 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.

§36-1A-6. Short title.
This article may be cited as the “Uniform Statutory Rule Against Perpetuities.”

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

§36-1A-8. Supersession repeal.
The provisions of this article supersede the rule of the common law known as the rule against perpetuities.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 21st day of February, 1992.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/17/92
Time 5:15 p.m.