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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992



ENROLLED

Com. Sub. for
HOUSE BILL No. 2261

(By Delegates *Love + Wilson*)



Passed *Feb. 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
- 3 or terminate no later than twenty-one years after the
- 4 death of an individual then alive; or

5 (2) The interest either vests or terminates within
6 ninety years after its creation.

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

10 (1) When the power is created, the condition prece-
11 dent is certain to be satisfied or become impossible to
12 satisfy no later than twenty-one years after the death of
13 an individual then alive; or

14 (2) The condition precedent either is satisfied or
15 becomes impossible to satisfy within ninety years after
16 its creation.

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

19 (1) When the power is created, it is certain to be
20 irrevocably exercised or otherwise to terminate no later
21 than twenty-one years after the death of an individual
22 then alive; or

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

25 (d) In determining whether a nonvested property
26 interest or a power of appointment is valid under the
27 provisions of subdivision (1), subsection (a), or subdivi-
28 sion (1), subsection (b), or subdivision (1), subsection (c)
29 of this section, the possibility that a child will be born
30 to an individual after the individual's death is disre-
31 garded.

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

1 (a) Except as provided in subsections (b) and (c) of
2 this section and in subsection (a), section five of this
3 article, the time of creation of a nonvested property
4 interest or a power of appointment is determined under
5 general principles of property law.

6 (b) For purposes of this article, if there is a person
7 who alone can exercise a power created by a governing
8 instrument to become the unqualified beneficial owner

9 of (1) a nonvested property interest or (2) a property
10 interest subject to a power of appointment described in
11 subsections (b) or (c), section one of this article, the
12 nonvested property interest or power of appointment is
13 created when the power to become the unqualified
14 beneficial owner terminates.

15 (c) For purposes of this article, a nonvested property
16 interest or a power of appointment arising from a
17 transfer of property to a previously funded trust or other
18 existing property arrangement is created when the
19 nonvested property interest or power of appointment in
20 the original contribution was created.

§36-1A-3. Reformation.

1 Upon the petition of an interested person, a court shall
2 reform a disposition in the manner that most closely
3 approximates the transferor's manifested plan of
4 distribution and is within the ninety years allowed by
5 the provisions of subdivision (2), subsection (a), or
6 subdivision (2), subsection (b), or subdivision (2),
7 subsection (c), section one of this article and if:

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

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

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

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

1 The provisions of section one of this article do not
2 apply to:

3 (1) A nonvested property interest or a power of
4 appointment arising out of a nondonative transfer,
5 except a nonvested property interest or a power of

6 appointment arising out of (A) a premarital or postmar-
7 ital agreement, (B) a separation or divorce settlement,
8 (C) a spouse's election, (D) a similar arrangement
9 arising out of a prospective, existing, or previous
10 marital relationship between the parties, (E) a contract
11 to make or not to revoke a will or trust, (F) a contract
12 to exercise or not to exercise a power of appointment,
13 (G) a transfer in satisfaction of a duty of support, or (H)
14 a reciprocal transfer;

15 (2) A fiduciary's power relating to the administration
16 or management of assets, including the power of a
17 fiduciary to sell, lease or mortgage property, and the
18 power of a fiduciary to determine principal and income;

19 (3) A power to appoint a fiduciary;

20 (4) A discretionary power of a trustee to distribute
21 principal before termination of a trust to a beneficiary
22 having an indefeasibly vested interest in the income and
23 principal;

24 (5) A nonvested property interest held by a charity,
25 government, or governmental agency or subdivision, if
26 the nonvested property interest is preceded by an
27 interest held by another charity, government, or
28 governmental agency or subdivision;

29 (6) A nonvested property interest in or a power of
30 appointment with respect to a trust or other property
31 arrangement forming part of a pension, profit-sharing,
32 stock bonus, health, disability, death benefit, income
33 deferral, or other current or deferred benefit plan for
34 one or more employees, independent contractors, or
35 their beneficiaries or spouses, to which contributions are
36 made for the purpose of distributing to or for the benefit
37 of the participants or their beneficiaries or spouses the
38 property, income, or principal in the trust or other
39 property arrangement, except a nonvested property
40 interest or a power of appointment that is created by
41 an election of a participant or a beneficiary or spouse;
42 or

43 (7) A property interest, power of appointment, or
44 arrangement that was not subject to the common-law

45 rule against perpetuities or is excluded by another
46 provision of this code.

§36-1A-5. Prospective application.

1 (a) Except as extended by subsection (b) of this
2 section, this article applies to a nonvested property
3 interest or a power of appointment that is created on or
4 after the effective date of this article. For purposes of
5 this section, a nonvested property interest or a power of
6 appointment created by the exercise of a power of
7 appointment is created when the power is irrevocably
8 exercised or when a revocable exercise becomes
9 irrevocable.

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

§36-1A-6. Short title.

1 This article may be cited as the "Uniform Statutory
2 Rule Against Perpetuities."

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

1 The provisions of this article shall be applied and
2 construed to effectuate its general purpose to make
3 uniform the law with respect to the subject of this
4 article among states enacting it.

§36-1A-8. Supersession repeal.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homer Leek

Chairman Senate Committee

Ernest C Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Parrell E. Nelson

Clerk of the Senate

Donald G. Kepp

Clerk of the House of Delegates

Walter Buntline

President of the Senate

B. B. C. C.

Speaker of the House of Delegates

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

Winston Caperton

Governor

PRESENTED TO THE

GOVERNOR

Date 2/17/92

Time 3:15 pm