

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 608

Short Title: Uniform Rule Against Perp.

(Public)

Sponsors: Senators Hartsell; Johnson and Simpson.

Referred to: Judiciary I.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT TO IMPLEMENT A RECOMMENDATION OF THE GENERAL STATUTES COMMISSION TO ENACT THE UNIFORM STATUTORY RULE AGAINST PERPETUITIES.

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 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;  
and

(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.

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

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

6               (2) The power is irrevocably exercised or otherwise terminates  
7 within 90 days after its creation.

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

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

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

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

17               (3) Seeks to operate in effect in any similar fashion upon,

18 the later of (i) the expiration of a period of time not exceeding 21 years after the death  
19 of the survivor of specified lives in being at the creation of the trust or other property  
20 arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21  
21 years after the death of the survivor of lives in being at the creation of the trust or other  
22 property arrangement, that language is inoperative to the extent it produces a period of  
23 time that exceeds 21 years after the death of the survivor of the specified lives.

24 **"§ 41-16. When nonvested property interest or power of appointment created.**

25       (a) Except as provided in subsections (b) and (c) of this section and in G.S. 41-  
26 19(a), the time for creation of a nonvested property interest or a power of appointment is  
27 determined under general principles of property law.

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

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

38 **"§ 41-17. Reformation.**

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

42               (1) A nonvested property interest or a power of appointment  
43 becomes invalid under G.S. 41-15;

1           (2) A class gift is not invalid under G.S. 41-15, but might become  
2 invalid under G.S. 41-15, and the time has arrived when the  
3 share of any class is to take effect in possession or enjoyment;

4 or

5           (3) A nonvested property interest that is not validated by G.S. 41-  
6 15(a)(1) can vest but not within 90 years after its creation.

7 **"§ 41-18. Exclusions from statutory rule against perpetuities.**

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

9           (1) A nonvested property interest or a power of appointment arising  
10 out of a nondonative transfer, except a nonvested property  
11 interest or a power of appointment arising out of:

12           a. A premarital or postmarital agreement;

13           b. A separation or divorce settlement;

14           c. A spouse's election;

15           d. A similar arrangement arising out of a prospective,  
16 existing, or previous marital relationship between the parties;

17           e. A contract to make or not to revoke a will or trust;

18           f. A contract to exercise or not to exercise a power of  
19 appointment;

20           g. A transfer in satisfaction of a duty of support; or

21           h. A reciprocal transfer;

22           (2) A fiduciary's power relating to the administration or  
23 management of assets, including the power of a fiduciary to  
24 sell, lease, or mortgage property, and the power of a fiduciary to  
25 determine principal and income;

26           (3) A power to appoint a fiduciary;

27           (4) A discretionary power of a trustee to distribute principal before  
28 termination of a trust to a beneficiary having an indefeasibly  
29 vested interest in the income and principal;

30           (5) A nonvested property interest held by a charity, government, or  
31 governmental agency or subdivision, if the nonvested property  
32 interest is preceded by an interest held by another charity,  
33 government, or governmental agency or subdivision;

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

1 appointment that is created by an election of a participant or a  
2 beneficiary or spouse;

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

6 (8) A property interest or arrangement subjected to a time limit  
7 under Article 13 of Chapter 36A or Article 3 of this Chapter,  
8 'Time Limits on Options in Gross and Certain Other Interests in  
9 Land', if enacted by the General Assembly.

10 **"§ 41-19. Prospective application.**

11 (a) Except as extended by subsection (b) of this section, this Article applies to a  
12 nonvested property interest or a power of appointment that is created on or after October  
13 1, 1993. For purposes of this section, a nonvested property interest or a power of  
14 appointment is created when the power is irrevocably exercised or when a revocable  
15 exercise becomes irrevocable.

16 (b) If a nonvested property interest or a power of appointment was created prior  
17 to October 1, 1993, and is determined in a judicial proceeding, commenced on or after  
18 October 1, 1993, to violate this State's rule against perpetuities as that rule existed  
19 before October 1, 1993, a court upon the petition of an interested person may reform the  
20 disposition in the manner that most closely approximates the transferor's manifested  
21 plan of distribution and is within the limits of the rule against perpetuities applicable  
22 when the nonvested property interest or power of appointment was created.

23 **"§ 41-20. Short title.**

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

25 **"§ 41-21. Uniformity of application and construction.**

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

28 **"§ 41-22. Supersession.**

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

31 Sec. 2. The Revisor of Statutes shall cause to be printed along with this act  
32 all relevant portions of the Official Commentary to the Uniform Statutory Rule Against  
33 Perpetuities Act and all explanatory comments of the drafters of this act as the Revisor  
34 may deem appropriate.

35 Sec. 3. This act becomes effective October 1, 1993.