

1 HB28
2 125901-2
3 By Representatives Newton (D) and Poole
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ENROLLED, An Act,

To add Chapter 4A to Title 35, Code of Alabama 1975, to enact the Alabama Uniform Statutory Rule Against Perpetuities; to provide for the vesting period of interests in real and personal property and for the duration of trusts; and to repeal Section 35-4-4 of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Chapter 4A is added to Title 35 of the Code of Alabama 1975, to read as follows:

Chapter 4A.

§35-4A-421. 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 100 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 becomes impossible to satisfy no later than 21 years after the death of an individual then alive; or

1 (2) the condition precedent either is satisfied or
2 becomes impossible to satisfy within 100 years after its
3 creation.

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

6 (1) when the power is created, it is certain to be
7 irrevocably exercised or otherwise to terminate no later than
8 21 years after the death of an individual then alive; or

9 (2) the power is irrevocably exercised or otherwise
10 terminates within 100 years after its creation.

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

16 (e) If, in measuring a period from the creation of a
17 trust or other property arrangement, language in a governing
18 instrument (i) seeks to disallow the vesting or termination of
19 any interest or trust beyond, (ii) seeks to postpone the
20 vesting or termination of any interest or trust until, or
21 (iii) seeks to operate in effect in any similar fashion upon,
22 the later of (A) the expiration of a period of time not
23 exceeding 21 years after the death of the survivor of
24 specified lives in being at the creation of the trust or other
25 property arrangement or (B) the expiration of a period of time

1 that exceeds or might exceed 21 years after the death of the
2 survivor of lives in being at the creation of the trust or
3 other property arrangement, that language is inoperative to
4 the extent it produces a period of time that exceeds 21 years
5 after the death of the survivor of the specified lives.

6 §35-4A-422. WHEN NONVESTED PROPERTY INTEREST OR
7 POWER OF APPOINTMENT CREATED.

8 (a) Except as provided in subsections (b), (c), and
9 (d) and in Section 35-4A-424, the time of creation of a
10 nonvested property interest or a power of appointment is
11 determined under general principles of property law.

12 (b) For purposes of this chapter, if there is a
13 person who alone can exercise a power created by a governing
14 instrument to become the unqualified beneficial owner of (i) a
15 nonvested property interest or (ii) a property interest
16 subject to a power of appointment described in Section
17 35-4A-221(b) or (c), the nonvested property interest or power
18 of appointment is created when the power to become the
19 unqualified beneficial owner terminates.

20 (c) For purposes of this chapter, a nonvested
21 property interest or a power of appointment arising from a
22 transfer of property to a previously funded trust or other
23 existing property arrangement is created when the nonvested
24 property interest or power of appointment in the original
25 contribution was created.

1 (d) For purposes of this chapter, if a nongeneral or
2 testamentary power of appointment is exercised to create
3 another nongeneral or testamentary power of appointment, every
4 nonvested property interest or power of appointment created
5 through the exercise of such other nongeneral or testamentary
6 power is considered to have been created at the time of the
7 creation of the first nongeneral or testamentary power of
8 appointment.

9 §35-4A-423. REFORMATION.

10 Upon the petition of an interested person, a circuit
11 court shall reform a disposition in the manner that most
12 closely approximates the transferor's manifested plan of
13 distribution and is within the 100 years allowed by Section
14 35-4A-221(a)(2), (b)(2), or (c)(2) or the 360 years allowed by
15 Section 35-4A-424(9) if:

16 (1) a nonvested property interest or a power of
17 appointment becomes invalid under Section 35-4A-421 (statutory
18 rule against perpetuities);

19 (2) a class gift is not but might become invalid
20 under Section 35-4A-421 (statutory rule against perpetuities)
21 and the time has arrived when the share of any class member is
22 to take effect in possession or enjoyment; or

23 (3) a nonvested property interest that is not
24 validated by Section 35-4A-421(a)(1) can vest but not within
25 100 years after its creation or in the case of a trust which

1 meets the requirements of Section 35-4A-424(9), 360 years of
2 its creation.

3 §35-4A-424. EXCLUSIONS FROM STATUTORY RULE AGAINST
4 PERPETUITIES.

5 Section 35-4A-421 (statutory rule against
6 perpetuities) does not apply to:

7 (1) a nonvested property interest or a power of
8 appointment arising out of a nondonative transfer, except a
9 nonvested property interest or a power of appointment arising
10 out of (i) a premarital or postmarital agreement, (ii) a
11 separation or divorce settlement, (iii) a spouse's election,
12 (iv) a similar arrangement arising out of a prospective,
13 existing, or previous marital relationship between the
14 parties, (v) a contract to make or not to revoke a will or
15 trust, (vi) a contract to exercise or not to exercise a power
16 of appointment, (vii) a transfer in satisfaction of a duty of
17 support, or (viii) a reciprocal transfer;

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

22 (3) a power to appoint a fiduciary;

23 (4) a discretionary power of a trustee to distribute
24 principal before termination of a trust to a beneficiary

1 having an indefeasibly vested interest in the income and
2 principal;

3 (5) a nonvested property interest held by a charity,
4 government, or governmental agency or subdivision, if the
5 nonvested property interest is preceded by an interest held by
6 another charity, government, or governmental agency or
7 subdivision;

8 (6) a nonvested property interest in a trust or
9 other property arrangement, which trust or other property
10 arrangement is exclusively for the benefit of one or more
11 charities, governments, or governmental agencies or
12 subdivisions;

13 (7) a nonvested property interest in or a power of
14 appointment with respect to a trust or other property
15 arrangement forming part of a pension, profit-sharing, stock
16 bonus, health, disability, death benefit, income deferral, or
17 other current or deferred benefit plan for one or more
18 employees, independent contractors, or their beneficiaries or
19 spouses, to which contributions are made for the purpose of
20 distributing to or for the benefit of the participants or
21 their beneficiaries or spouses the property, income, or
22 principal in the trust or other property arrangement, except a
23 nonvested property interest or a power of appointment that is
24 created by an election of a participant or a beneficiary or
25 spouse;

1 (8) a property interest, power of appointment, or
2 arrangement that was not subject to the common-law rule
3 against perpetuities or is excluded by another statute of this
4 state; or

5 (9) a trust, (i) which on its terms does not exceed
6 360 years in duration, (ii) which is governed by the laws of
7 this state, and (iii) the instrument governing which includes
8 a power of the trustee to sell, lease, and mortgage all
9 property held in trust.

10 §35-4A-425. PROSPECTIVE APPLICATION.

11 This chapter applies to a nonvested property
12 interest or a power of appointment that is created on or after
13 January 1, 2012. For purposes of this section, a nonvested
14 property interest or a power of appointment created by the
15 exercise of a power of appointment is created when the power
16 is irrevocably exercised or when a revocable exercise becomes
17 irrevocable.

18 §35-4A-426. SHORT TITLE.

19 This chapter may be cited as the Alabama Uniform
20 Statutory Rule Against Perpetuities.

21 §35-4A-427. UNIFORMITY OF APPLICATION AND
22 CONSTRUCTION.

23 This chapter shall be applied and construed to
24 effectuate its general purpose to make uniform the law with

1 respect to the subject of this chapter among states enacting
2 it.

3 §35-4A-428.

4 This chapter supersedes the rule of the common law
5 known as the rule against perpetuities.

6 Section 2. Section 35-4-4 of the Code of Alabama
7 1975, is expressly repealed.

8 Section 3. This act takes effect January 1, 2012.

