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Chapter No. 414
15/HR26/R303SG
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HOUSE BILL NO. 153

Originated in House _____ Clerk

HOUSE BILL NO. 153

AN ACT TO CREATE THE "MISSISSIPPI UNIFORM STATUTORY RULE AGAINST PERPETUITIES"; TO PROVIDE FOR THE STATUTORY RULE AGAINST PERPETUITIES; TO PROVIDE WHEN A NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT IS CREATED; TO AUTHORIZE A PROCEDURE FOR REFORMATION BY THE COURT; TO LIST THE EXCLUSIONS FROM THE STATUTORY RULE AGAINST PERPETUITIES; TO PROVIDE FOR PROSPECTIVE APPLICATION OF THIS ACT; TO PROVIDE THAT THIS ACT'S GENERAL PURPOSE IS FOR UNIFORMITY OF THE LAW; TO PROVIDE THAT THIS ACT SUPERSEDES THE COMMON LAW RULE AGAINST PERPETUITIES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Short title. This act shall be known and may be referred to as the "Mississippi Uniform Statutory Rule Against Perpetuities."

SECTION 2. Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

(a) When the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive; or

(b) The interest either vests or terminates within ninety (90) years after its creation.

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) When the power is created, the condition precedent is certain to be satisfied or becomes impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive; or

(b) The condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation.

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

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

(b) The power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation.

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a) of this section, the possibility that a child will be born to an individual after the individual's death disregarded.

(5) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any

interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

(a) The expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or

(b) The expiration of a period of time that exceeds or might exceed twenty-one (21) years after the death of the survivor of lives in being at the creation of the trust or other property arrangement;

that language is inoperative to the extent that it produces a period of time that exceeds twenty-one (21) years after the death of the survivor of the specified lives.

SECTION 3. When nonvested property interest or power of appointment is created. (1) Except as provided in subsections (2), (3) and (4) of this section and in Section 6(1) of this act, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of this act, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of:

(a) A nonvested property interest; or

(b) A property interest subject to a power of appointment described in Section 2(2) or (3) of this act, the

nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(3) For purposes of this act, 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.

(4) For purposes of this act, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of the other 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.

SECTION 4. Reformation. Upon 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 (90) years allowed by Section 2(1)(b), (2)(b) or (3)(b) of this act or the three hundred sixty (360) years allowed in Section 5(h) of this act, if:

(a) A nonvested property interest or a power of appointment becomes invalid under Section 2 of this act;

(b) A class gift is not invalid, but might become invalid under Section 2 of this act, and the time has arrived when the share of any class member is to take effect in possession or enjoyment;

(c) A nonvested property interest that is not validated by Section (2)(1)(a) of this act can vest but not within ninety (90) years after its creation; or

(d) In the case of a trust which otherwise meets the requirements of Section 5(h) of this act, all beneficial interests in the trust can vest or the trust can terminate but not within three hundred sixty (360) years.

SECTION 5. Exclusions from the statutory rule against perpetuities. Section 2 of this act shall not apply to:

(a) 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:

(i) A premarital or postmarital agreement;

(ii) A separation or divorce settlement;

(iii) A spouse's election;

(iv) A similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties;

(v) A contract to make or not to revoke a will or trust;

(vi) A contract to exercise or not to exercise a power of appointment;

(vii) A transfer in satisfaction of a duty of support; or

(viii) A reciprocal transfer;

(b) 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;

(c) A power to appoint a fiduciary;

(d) 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;

(e) 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;

(f) 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;

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

(h) A trust:

(i) That is governed by the laws of this state;

(ii) That grants to the trustee the power to sell trust property; and

(iii) Which, pursuant to the terms of the trust instrument, does not exceed:

1. Three hundred sixty (360) years as to personal property; and

2. One hundred ten (110) years as to real property.

SECTION 6. Prospective application. (1) Except as provided by subsection (2) of this section, this act applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this act. 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.

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

SECTION 7. Uniformity. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 8. Supersession. This act supersedes the rule of the common law known as the rule against perpetuities.

SECTION 9. This act shall take effect and be in force from and after July 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
February 4, 2015

Philip Gunn

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 5, 2015

Tate Reeves

PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

Phil Bryant

GOVERNOR

3/23/15
2:39 pm