

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5562

By Delegates Barnhart, Criss, Anderson, Zatezalo,

Westfall, and Hott

[Introduced February 12, 2024; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §36-1A-1, §36-1A-2, §36-1A-5, §36-1A-6, and §36-1A-7 of the Code
 2 of West Virginia, 1931, as amended, all relating to the repeal of the common law rule
 3 against perpetuities by extending it to 1,000 years for all trusts.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. UNIFORM STATUTORY RULES AGAINST PERPETUITIES.

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

1 (a) Except as provided in subsection (e) of this section, a nonvested property interest is
 2 invalid unless:

3 (1) When the interest is created, it is certain to vest or terminate no later than 21 years after
 4 the death of an individual then alive; or

5 (2) The interest either vests or terminates within 90 years after its creation.

6 (b) Except as provided in subsection (e) of this section, a general power of appointment not
 7 presently exercisable because of a condition precedent is invalid unless:

8 (1) When the power is created, the condition precedent is certain to be satisfied or become
 9 impossible to satisfy no later than 21 years after the death of an individual then alive; or

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

12 (c) Except as provided in subsection (e) of this section, a nongeneral power of appointment
 13 or a general testamentary power of appointment is invalid unless:

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

16 (2) The power is irrevocably exercised or otherwise terminates within 90 years after its
 17 creation.

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

21 (e) As to any trust ~~administered by a private trust company pursuant to §311-1-1 et seq. of~~
 22 ~~this code~~ created on or after July 1, 2023 2024, this ~~subsection~~ article shall apply to a nonvested
 23 property interest or power of appointment contained in a trust by substituting 1,000 years in place
 24 of "90 years" in each place such term appears in this ~~section~~ article, unless the terms of the trust
 25 expressly require that all beneficial interests in the trust vest or terminate within a lesser period.

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

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

4 (b) For purposes of this article, if there is a person who alone can exercise a power created
 5 by a governing instrument to become the unqualified beneficial owner of (1) a nonvested property
 6 interest or (2) a property interest subject to a power of appointment described in subsections (b) or
 7 (c), section one of this article, the nonvested property interest or power of appointment is created
 8 when the power to become the unqualified beneficial owner terminates.

9 (c) For purposes of this article, a nonvested property interest or a power of appointment
 10 arising from a transfer of property to a previously funded trust or other existing property
 11 arrangement is created when the nonvested property interest or power of appointment in the
 12 original contribution was created.

13 (d) For the purposes of this article, if a nongeneral or testamentary power of appointment is
 14 exercised to create another nongeneral or testamentary power of appointment, every nonvested
 15 property interest or power of appointment created through the exercise of such nongeneral or
 16 testamentary power of appointment is considered to have been created at the time of the creation
 17 of the first nongeneral or testamentary power of appointment.

§36-1A-5. ~~Prospective~~ ~~application~~ Application.

1 (a) Except as extended by subsection ~~(b)~~(c) of this section, this article applies to a
 2 nonvested property interest or a power of appointment that is created on or after ~~the effective date~~

3 ~~of this article~~ July 1, 2024. For purposes of this section, a nonvested property interest or a power of
 4 appointment created by the exercise of a power of appointment is created when the power is
 5 irrevocably exercised or when a revocable exercise becomes irrevocable.

6 (b) This article also applies to a power of appointment that was created before July 1, 2024,
 7 but only to the extent that it remains unexercised on July 1, 2024.

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

§36-1A-6. Short title.

1 (a) This article may be cited as the "West Virginia Uniform Statutory Rule Against
 2 Perpetuities."

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

1 (a) With respect to any matter relating to the validity of an interest within the rule against
 2 perpetuities, unless a contrary intent appears in the instrument, as a rule of construction it shall be
 3 presumed that the transferor of the interest intended that the interest be valid.

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

NOTE: The purpose of this bill is to repeal the common law rule against perpetuities by prospectively extending its application to all trusts to 1,000 years. Repeal is intended to modernize West Virginia trust law and permit multi-generational "dynasty trusts" to assist in preservation of wealth of West Virginia families, which will benefit the state financially. This bill extends to all trusts the repeal of the rule against perpetuities which was made applicable in 2023 only to a limited set of trusts administered by a Private Trust Company as provided in H.B. 3272 (passed February 22, 2023).

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.