

By: Representative Gunn

To: Judiciary A

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 153

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

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

12 **SECTION 1. Short Title.** This act shall be known and may be
13 referred to as the "Mississippi Uniform Statutory Rule Against
14 Perpetuities."

15 **SECTION 2. Statutory Rule Against Perpetuities.**

16 (1) A nonvested property interest is invalid unless either
17 of the following conditions is satisfied:

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

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



23 (2) A general power of appointment not presently exercisable
24 because of a condition precedent is invalid unless either of the
25 following conditions is satisfied:

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

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

33 (3) A nongeneral power of appointment or a general
34 testamentary power of appointment is invalid, unless either of the
35 following conditions is satisfied:

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

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

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



47 (5) If, in measuring a period from the creation of a trust
48 or other property arrangement, language in a governing instrument
49 seeks to disallow the vesting or termination of any interest or
50 trust beyond, seeks to postpone the vesting or termination of any
51 interest or trust until, or seeks to operate in effect in any
52 similar fashion upon, the later of:

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

57 (b) The expiration of a period of time that exceeds or
58 might exceed twenty-one (21) years after the death of the survivor
59 of lives in being at the creation of the trust or other property
60 arrangement; such language is inoperative to the extent that it
61 produces a period of time that exceeds twenty-one (21) years after
62 the death of the survivor of the specified lives.

63 **SECTION 3. When Nonvested Property Interest or Power of**
64 **Appointment is Created.**

65 (1) Except as provided in subsections (2), (3) and (4) of
66 this section and in subsection (1) of Section 6 of this act, the
67 time of creation of a nonvested property interest or a power of
68 appointment is determined under general principles of property
69 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 subsections (2) or (3) of Section 2 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 such 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 paragraphs (b) in subsections (1), (2) and (3) of Section 2 or the three hundred sixty (360) years allowed in paragraph (h) of Section 5 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) 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 paragraph (h) of Section 5 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.

The statutory rule against perpetuities provided by 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) which, pursuant to the terms of the
trust instrument, does not exceed three hundred sixty (360) years
in duration, (ii) which is governed by the laws of this state, and
(iii) its trustee has the power to sell trust 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 that is 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 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. Effective Date. This act shall take effect and be in force from and after July 1, 2015.

