

By: Representative Gunn

To: Judiciary A

HOUSE BILL NO. 153
(As Sent to Governor)

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.** (1) A
16 nonvested property interest is invalid unless:

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

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



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

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

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

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

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

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

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

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



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

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

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

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

60 **SECTION 3. When nonvested property interest or power of**
61 **appointment is created.** (1) Except as provided in subsections
62 (2), (3) and (4) of this section and in Section 6(1) of this act,
63 the time of creation of a nonvested property interest or a power
64 of appointment is determined under general principles of property
65 law.

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

69 (a) A nonvested property interest; or

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



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

75 (3) For purposes of this act, a nonvested property interest
76 or a power of appointment arising from a transfer of property to a
77 previously funded trust or other existing property arrangement is
78 created when the nonvested property interest or power of
79 appointment in the original contribution was created.

80 (4) For purposes of this act, if a nongeneral or
81 testamentary power of appointment is exercised to create another
82 nongeneral or testamentary power of appointment, every nonvested
83 property interest or power of appointment created through the
84 exercise of the other nongeneral or testamentary power of
85 appointment is considered to have been created at the time of the
86 creation of the first nongeneral or testamentary power of
87 appointment.

88 **SECTION 4. Reformation.** Upon petition of an interested
89 person, a court shall reform a disposition in the manner that most
90 closely approximates the transferor's manifested plan of
91 distribution and is within the ninety (90) years allowed by
92 Section 2(1)(b), (2)(b) or (3)(b) of this act or the three hundred
93 sixty (360) years allowed in Section 5(h) of this act, if:

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



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

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

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

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

109 (a) A nonvested property interest or a power of
110 appointment arising out of a nondonative transfer, except a
111 nonvested property interest or a power of appointment arising out
112 of:

113 (i) A premarital or postmarital agreement;

114 (ii) A separation or divorce settlement;

115 (iii) A spouse's election;

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

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



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

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

125 (viii) A reciprocal transfer;

126 (b) A fiduciary's power relating to the administration
127 or management of assets, including the power of a fiduciary to
128 sell, lease, or mortgage property, and the power of a fiduciary to
129 determine principal and income;

130 (c) A power to appoint a fiduciary;

131 (d) A discretionary power of a trustee to distribute
132 principal before termination of a trust to a beneficiary having an
133 indefeasibly vested interest in the income and principal;

134 (e) A nonvested property interest held by a charity,
135 government, or governmental agency or subdivision, if the
136 nonvested property interest is preceded by an interest held by
137 another charity, government, or governmental agency or
138 subdivision;

139 (f) A nonvested property interest in or a power of
140 appointment with respect to a trust or other property arrangement
141 forming part of a pension, profit-sharing, stock bonus, health,
142 disability, death benefit, income deferral, or other current or
143 deferred benefit plan for one or more employees, independent
144 contractors, or their beneficiaries or spouses, to which
145 contributions are made for the purpose of distributing to or for



146 the benefit of the participants or their beneficiaries or spouses
147 the property, income, or principal in the trust or other property
148 arrangement, except a nonvested property interest or a power of
149 appointment that is created by an election of a participant or a
150 beneficiary or spouse;

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

154 (h) A trust:

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

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

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

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

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

164 **SECTION 6. Prospective application.** (1) Except as provided
165 by subsection (2) of this section, this act applies to a nonvested
166 property interest or a power of appointment that is created on or
167 after the effective date of this act. For purposes of this
168 section, a nonvested property interest or a power of appointment
169 created by the exercise of a power of appointment is created when



170 the power is irrevocably exercised or when a revocable exercise
171 becomes irrevocable.

172 (2) If a nonvested property interest or a power of
173 appointment was created before the effective date of this act and
174 is determined in a judicial proceeding, commenced on or after the
175 effective date of this act, to violate this state's rule against
176 perpetuities as that rule existed before the effective date of
177 this act, a court upon the petition of an interested person may
178 reform the disposition in the manner that most closely
179 approximates the transferor's manifested plan of distribution and
180 is within the limits of the rule against perpetuities applicable
181 when the nonvested property interest or power of appointment was
182 created.

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

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

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

