

A Bill for an Act Relating to the Rule Against Perpetuities.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The purpose of this Act is to supersede the common law rule against perpetuities by installing a workable wait-and-see element, as formulated by the National Conference of Commissioners on Uniform State Laws.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM STATUTORY RULE AGAINST PERPETUITIES**

§ **-1 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 twenty-one years after the death of an individual then alive; or
- (2) The interest either vests or terminates within ninety 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 twenty-one years after the death of an individual then alive; or
- (2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

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

- (1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or
- (2) The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

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

(e) If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument either 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:

- (1) The expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement; or
- (2) The expiration of a period of time that exceeds or might exceed twenty-one 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 it produces a period of time that exceeds twenty-one years after the death of the survivor of the specified lives.

**§ -2 When nonvested property interest or power of appointment created.** (a) Except as provided in subsections (b) and (c) and in section -4(a), the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For the purposes of this chapter, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in section -1(b) or (c), the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. For the purposes of this chapter, a joint power with respect to community property under chapter 510 held by individuals married to each other is a power exercisable by one person alone.

(c) For the purposes of this chapter, 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.

**§ -3 Reformation.** Upon the 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 years allowed by section -1(a)(2), (b)(2), or (c)(2) if:

- (1) A nonvested property interest or a power of appointment becomes invalid under section -1;
- (2) A class gift is not but might become invalid under section -1 and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or
- (3) A nonvested property interest that is not validated by section -1(a)(1) can vest but not within ninety years after its creation.

**§ -4 Exclusions from statutory rule against perpetuities.** Section -1 shall not apply to:

- (1) A fiduciary's power to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;
- (2) A discretionary power of a trustee to distribute principal before termination of a trust;
- (3) 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;
- (4) A property interest in or a power of appointment with respect to 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; or
- (5) A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by any other applicable law.

**§ -5 Prospective application.** (a) Except as extended by subsection (b), this chapter applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this chapter. For the 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.

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

§ -6 **Short title.** This chapter may be cited as the "Uniform Statutory Rule Against Perpetuities".

SECTION 3. Section 407-66, Hawaii Revised Statutes, is amended to read as follows:

**"§407-66 Savings or share accounts as legal investments and as security for bonds; multiple trust accounts.** Any personal representative, custodian, guardian, trustee, or other fiduciary, insurance company, business or manufacturing company, bank, escrow company, credit union, or other financial institution, and any charitable, educational, or eleemosynary corporation or organization, may invest funds held by [him or it] that person or organization without any court order, in savings or share accounts of any insured savings association under state supervision, or in accounts of any federal savings and loan association organized under federal law and under federal supervision, and these investments shall be considered legal investments. The investments may be made directly or through a trustee appointed by the entity under a trust agreement naming such entity as sole beneficiary thereunder. The entity may establish a trust and each trust established under a trust agreement authorized by this section shall be valid from the date of its establishment, provided that it does not violate the statutory rule against perpetuities[.] under chapter.

If a deposit of security is required for any purpose, legal investments under this section shall be acceptable as such deposit.

If a bond is required with security, the bond may be furnished, and the legal investments under this section in the amount of the bond, when deposited therewith, shall be acceptable as such security.

This section is supplemental to any law relating to legal investments for any person, corporation, or organization referred to in this section and to any law relating to the deposit of securities and the making or filing of bonds with security."

SECTION 4. Section 555-2, Hawaii Revised Statutes, is amended to read as follows:

**"§555-2 Trust not in violation of rule against perpetuities.** Any employees trust may continue for such time as may be necessary to accomplish the purposes for which it has been created and its income may be accumulated for such time as may be necessary to accomplish such purposes. No employees trust shall be deemed to be subject to or in violation of any principle of law against perpetuities under chapter or at common law, or restraints on alienation or perpetual accumulations or perpetual trusts.

The enactment of this chapter shall not in itself give rise to any implication that trusts of this nature have been subject to or in violation of any principle of law against perpetuities under chapter \_\_\_\_\_ or at common law, or restraints on alienation or perpetual accumulations or perpetual trusts.”

SECTION 5. This Act shall supersede the common law rule against perpetuities in this State and 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 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 18, 1992.)