

Stricken language would be deleted from and underlined language would be added to present law.  
Act 240 of the Regular Session

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

As Engrossed: H1/19/07 S2/22/07

**A Bill**

HOUSE BILL 1130

5 By: Representatives Harrelson, Thyer  
6  
7

**For An Act To Be Entitled**

9 AN ACT TO ADOPT THE UNIFORM STATUTORY RULE  
10 AGAINST PERPETUITIES; TO REPEAL THE COMMON LAW  
11 RULE AGAINST PERPETUITIES; TO MAKE CONFORMING  
12 CHANGES TO EXISTING LAW; AND FOR OTHER PURPOSES.  
13

**Subtitle**

14 TO ADOPT THE UNIFORM STATUTORY RULE  
15 AGAINST PERPETUITIES.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code Title 18 is amended to add a new chapter to  
22 read as follows:

23 18-3-101. Statutory rule against perpetuities.

24 (a) A nonvested property interest is invalid unless:

25 (1) when the interest is created, it is certain to vest or  
26 terminate no later than 21 years after the death of an individual then alive;  
27 or

28 (2) the interest either vests or terminates within 90 years  
29 after its creation.

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

32 (1) when the power is created, the condition precedent is  
33 certain to be satisfied or becomes impossible to satisfy no later than  
34 21 years after the death of an individual then alive; or

35 (2) the condition precedent either is satisfied or becomes  
36 impossible to satisfy within 90 years after its creation.



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

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

6               (2) the power is irrevocably exercised or otherwise terminates  
7 within 90 years after its creation.

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

12       (e) If, in measuring a period from the creation of a trust or other  
13 property arrangement, language in a governing instrument (i) seeks to  
14 disallow the vesting or termination of any interest or trust beyond, (ii)  
15 seeks to postpone the vesting or termination of any interest or trust until,  
16 or (iii) seeks to operate in effect in any similar fashion upon, the later of  
17 (A) the expiration of a period of time not exceeding 21 years after the death  
18 of the survivor of specified lives in being at the creation of the trust or  
19 other property arrangement or (B) the expiration of a period of time that  
20 exceeds or might exceed 21 years after the death of the survivor of lives in  
21 being at the creation of the trust or other property arrangement, that  
22 language is inoperative to the extent it produces a period of time that  
23 exceeds 21 years after the death of the survivor of the specified lives.

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25       18-3-102. When nonvested property interest or power of appointment  
26 created.

27       (a) Except as provided in subsections (b) and (c) of this section and  
28 in § 18-3-105(a), the time of creation of a nonvested property interest or a  
29 power of appointment is determined under general principles of property law.

30       (b) For purposes of this chapter, if there is a person who alone can  
31 exercise a power created by a governing instrument to become the unqualified  
32 beneficial owner of (i) a nonvested property interest or (ii) a property  
33 interest subject to a power of appointment described in § 18-3-101(b) or §  
34 18-3-101(c), the nonvested property interest or power of appointment is  
35 created when the power to become the unqualified beneficial owner terminates.

36       (c) For purposes of this chapter, a nonvested property interest or a

1 power of appointment arising from a transfer of property to a previously  
2 funded trust or other existing property arrangement is created when the  
3 nonvested property interest or power of appointment in the original  
4 contribution was created.

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6 18-3-103. Reformation.

7 Upon the petition of an interested person, a court shall reform a  
8 disposition in the manner that most closely approximates the transferor's  
9 manifested plan of distribution and is within the 90 years allowed by § 18-3-  
10 101(a)(2), § 18-3-101(b)(2), or § 18-3-101(c)(2) if:

11 (1) a nonvested property interest or a power of appointment  
12 becomes invalid under § 18-3-101;

13 (2) a class gift is not but might become invalid under § 18-3-  
14 101 and the time has arrived when the share of any class member is to take  
15 effect in possession or enjoyment; or

16 (3) a nonvested property interest that is not validated by § 18-  
17 3-101(a)(1) can vest but not within 90 years after its creation.

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19 18-3-104. Exclusions from statutory rule against perpetuities.

20 Section 18-3-101 does not apply to:

21 (1) a nonvested property interest or a power of appointment  
22 arising out of a nondonative transfer, except a nonvested property interest  
23 or a power of appointment arising out of (i) a premarital or postmarital  
24 agreement, (ii) a separation or divorce settlement, (iii) a spouse's  
25 election, (iv) a similar arrangement arising out of a prospective, existing,  
26 or previous marital relationship between the parties, (v) a contract to make  
27 or not to revoke a will or trust, (vi) a contract to exercise or not to  
28 exercise a power of appointment, (vii) a transfer in satisfaction of a duty  
29 of support, or (viii) a reciprocal transfer;

30 (2) a fiduciary's power relating to the administration or  
31 management of assets, including the power of a fiduciary to sell, lease, or  
32 mortgage property, and the power of a fiduciary to determine principal and  
33 income;

34 (3) a power to appoint a fiduciary;

35 (4) a discretionary power of a trustee to distribute principal  
36 before termination of a trust to a beneficiary having an indefeasibly vested

1 interest in the income and principal;

2 (5) a nonvested property interest held by a charity, government,  
3 or governmental agency or subdivision, if the nonvested property interest is  
4 preceded by an interest held by another charity, government, or governmental  
5 agency or subdivision;

6 (6) a nonvested property interest in or a power of appointment  
7 with respect to a trust or other property arrangement forming part of a  
8 pension, profit-sharing, stock bonus, health, disability, death benefit,  
9 income deferral, or other current or deferred benefit plan for one or more  
10 employees, independent contractors, or their beneficiaries or spouses, to  
11 which contributions are made for the purpose of distributing to or for the  
12 benefit of the participants or their beneficiaries or spouses the property,  
13 income, or principal in the trust or other property arrangement, except a  
14 nonvested property interest or a power of appointment that is created by an  
15 election of a participant or a beneficiary or spouse; or

16 (7) a property interest, power of appointment, or arrangement  
17 that was not subject to the common-law rule against perpetuities or is  
18 excluded by another statute of this State.

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20 18-3-105. Prospective application.

21 (a) Except as extended by subsection (b) of this section, this chapter  
22 applies to a nonvested property interest or a power of appointment that is  
23 created on or after the effective date of this chapter. For purposes of this  
24 section, a nonvested property interest or a power of appointment created by  
25 the exercise of a power of appointment is created when the power is  
26 irrevocably exercised or when a revocable exercise becomes irrevocable.

27 (b) If a nonvested property interest or a power of appointment was  
28 created before the effective date of this chapter and is determined in a  
29 judicial proceeding, commenced on or after the effective date of this  
30 chapter, to violate this State's rule against perpetuities as that rule  
31 existed before the effective date of this chapter, a court upon the petition  
32 of an interested person may reform the disposition in the manner that most  
33 closely approximates the transferor's manifested plan of distribution and is  
34 within the limits of the rule against perpetuities applicable when the  
35 nonvested property interest or power of appointment was created.

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1       18-3-106. Short title.

2       This chapter may be cited as the Uniform Statutory Rule Against  
3 Perpetuities.

5       18-3-107. Uniformity of application and construction.

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

10       18-3-108 [Reserved.]

12       18-3-109. Supersession of common law.

13       This chapter supersedes the rule of the common law known as the rule  
14 against perpetuities.

16       SECTION 2. Arkansas Code § 20-17-904 is amended to read as follows:

17       20-17-904. Perpetual care trust.

18       (a) By trust instrument or will, any person may establish a trust fund  
19 in perpetuity with the income from the trust fund to go to the upkeep of  
20 certain specified burial lots or plots in one (1) or more cemeteries or  
21 burial grounds in the State of Arkansas.

22       (b)(1) No amount placed in trust pursuant to subsection (a) of this  
23 section by any one (1) trustor or testator shall be in excess of the sum of  
24 two hundred thousand dollars (\$200,000).

25       (2) The trust fund shall be:

26               (A) Invested in state, municipal, or federal obligations;

27               (B) Deposited for interest in a savings and loan  
28 association whose funds are insured by the Federal Savings and Loan Insurance  
29 Corporation; or

30               (C) Placed on interest-bearing time deposit in a bank  
31 whose funds are guaranteed by the Federal Deposit Insurance Corporation.

32       (3) The trust fund shall be so invested or deposited as directed  
33 by the circuit court of the county in which are located the burial grounds  
34 specified in the trust instrument of the trustor or will of the testator.

35       (c) The trustee of the fund shall file an annual report in the circuit  
36 court of the county in which the burial grounds are located showing the

1 receipts and disbursements from the trust fund.

2 (d) The provisions of subsections (a)-(c) of this section are in  
3 addition to any other laws relating to cemeteries and trust funds.

4 (e) ~~The~~ No rule against perpetuities shall ~~not~~ apply to property or  
5 funds set aside or trust created for the perpetual care of burial lots in  
6 cemeteries.

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8 SECTION 3. Arkansas Code § 20-17-1013 is amended to read as follows:  
9 20-17-1013. Permanent maintenance fund generally.

10 (a)(1) The permanent maintenance fund is declared to be a trust fund  
11 for the purpose of administration, care, and maintenance of the cemetery,  
12 including lots, graves, spaces, crypts, niches, burial rights, or otherwise.

13 (2) The net income from the fund shall be paid to and be  
14 exclusively used and expended by the owners, managers, or officers and  
15 directors of the cemetery company for the care and maintenance of the  
16 cemetery and for no other purpose.

17 (3) The principal of the fund shall be invested and remain  
18 invested in such securities and funds as are permitted by the laws of  
19 Arkansas for the investment of policy reserves of life insurance companies as  
20 set forth in § 23-60-101 et seq., and in the common trust funds of state or  
21 national banks.

22 (4) However, any permanent maintenance fund having assets of  
23 more than two hundred fifty thousand dollars (\$250,000) may invest not more  
24 than fifty percent (50%) of its assets in nonassessable common stocks which  
25 are listed on a national securities exchange, preferred stocks meeting the  
26 requirements of § 23-63-815, and investment trust securities meeting the  
27 requirements of § 23-63-820, and the diversification restrictions of § 23-63-  
28 805 shall not apply to investments in investment trust securities.

29 (5) In investing these funds, the trustee shall exercise the  
30 judgment and care under the circumstances then prevailing which persons of  
31 prudence, discretion, and intelligence exercise in management of their own  
32 affairs, not in regard to speculation, but in regard to the permanent  
33 disposition of their funds, considering the probable income and capital  
34 appreciation as well as the probable safety of their capital.

35 (b) The permanent maintenance fund is authorized by this subchapter,  
36 and all sums paid into it or contributed to it shall be deemed to be for

1 charitable and eleemosynary purposes.

2 (c) ~~The~~ No rule against perpetuities shall ~~not~~ be applicable to funds  
3 as mentioned in this section.

4 (d) The trust fund shall be established by executing a written trust  
5 agreement approved by the Arkansas Cemetery Board.

6 (2) The agreement may provide that the cemetery company may  
7 change the trustee of its trust fund so long as the successor trustee is in  
8 accordance with § 20-17-1014 and the present trustee and successor trustee  
9 are parties to the amendment of the agreement.

10 (e) At a minimum, the trustee shall maintain the following:

11 (1) A general ledger and general journal or comparable books of  
12 entry showing all receipts, disbursements, assets, liabilities, and income of  
13 the trust fund;

14 (2) Documents supporting and verifying each asset of the trust  
15 fund; and

16 (3) A trust agreement.

17 (f) In establishing a permanent maintenance fund, the cemetery company  
18 may from time to time adopt plans for the general care and maintenance of its  
19 cemetery.

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21 SECTION 4. Arkansas Code § 28-10-206 is amended to read as follows:

22 28-10-206. Exceptions.

23 This subchapter does not apply if:

24 (1) the governing instrument contains language dealing  
25 explicitly with simultaneous deaths or deaths in a common disaster and that  
26 language is operable under the facts of the case;

27 (2) the governing instrument expressly indicates that an  
28 individual is not required to survive an event, including the death of  
29 another individual, by any specified period or expressly requires the  
30 individual to survive the event for a specified *period*;

31 (3) *the imposition of 120-hour requirement of survival would*  
32 *cause a nonvested property interest or a power of appointment to be invalid*  
33 *under ~~the Rule Against Perpetuities~~ any rule against perpetuities; or*

34 (4) the application of a 120-hour requirement of survival to  
35 multiple governing instruments would result in an unintended failure or  
36 *duplication of a disposition.*

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SECTION 5. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the current extremely harsh remedy under the rule against perpetuities that renders a grantor's entire grant void if the grant violates the rule is outdated and should be replaced; that the common law rule fosters litigation at great cost to the citizens of this state because of its many complexities, with often devastating consequences to estates; and that the revision by this act of the common law remedy to permit the likely occurrence that a grant will vest or to permit a court to reform a grant that does not vest in the manner that most likely approximate the transferor's manifested plan is immediately necessary for the good of the citizens of this state. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

/s/ Harrelson

APPROVED: 3/9/2007