

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

A Bill

HOUSE BILL 1130

4
5 By: Representative Harrelson
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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.

Subtitle

14
15 TO ADOPT THE UNIFORM STATUTORY RULE
16 AGAINST PERPETUITIES.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

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.

24
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

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.

18-3-103. 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 90 years allowed by § 18-3-101(a)(2), § 18-3-101(b)(2), or § 18-3-101(c)(2) if:

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

(2) a class gift is not but might become invalid under § 18-3-101 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 § 18-3-101(a)(1) can vest but not within 90 years after its creation.

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

Section 18-3-101 does not apply to:

(1) 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;

(2) 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;

(3) a power to appoint a fiduciary;

(4) a discretionary power of a trustee to distribute principal 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.

19
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.

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 rule against perpetuities shall not apply to property or funds~~
5 ~~set aside or trust created for the perpetual care of burial lots in~~
6 ~~cemeteries.~~

7
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 ~~(e) The rule against perpetuities shall not be applicable to funds as~~
 3 ~~mentioned in this section.~~

4 ~~(d)~~(c)(1) The trust fund shall be established by executing a written
 5 trust 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)~~(d) 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)~~(e) In establishing a permanent maintenance fund, the cemetery
 18 company may from time to time adopt plans for the general care and
 19 maintenance of its 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; or

31 ~~(3) the imposition of a 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; or~~

34 ~~(4)~~(3) 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.