

46:2F-1

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 46:2F-1

(Uniform rule
against
perpetuities)

LAWS OF: 1991

CHAPTER: 192

Bill No: S2888

Sponsor(s): O'Connor

Date Introduced: October 1, 1990

Committee: Assembly: -----

Senate: Judiciary

Amended during passage: Yes Amendments denoted by asterisks
according to Governor's
recommendations

Date of Passage: Assembly: February 25, 1991

Senate: January 14, 1991

Date of Approval: July 3, 1991

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: No

Veto Message: Yes

Message on signing: No

Following were printed:

Reports: No

Hearings: No

(over)

For Uniform Statutory Rule Against Perpetuities-see

KF 165 National Conference of Commissioners on Uniform State Laws.
A2 Handbook...Annual Conference.
Boston, Massachusetts, 1986.
pp. 48,63,67-68, 419-456

KBG/SLJ

STATE OF NEW JERSEY

INTRODUCED OCTOBER 1, 1990

By Senator O'CONNOR

1 AN ACT enacting a uniform rule against perpetuities and
2 supplementing Title 46 of the Revised Statutes.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. a. A nonvested property interest is invalid unless:

7 (1) When the interest is created, it is certain to vest or
8 terminate no later than 21 years after the death of an individual
9 then alive; or

10 (2) The interest either vests or terminates within 90 years
11 after its creation.

12 b. A general power of appointment not presently exercisable
13 because of a condition precedent is invalid unless:

14 (1) When the power is created, the condition precedent is
15 certain to be satisfied or become impossible to satisfy no later
16 than 21 years after the death of an individual then alive; or

17 (2) The condition precedent either is satisfied or becomes
18 impossible to satisfy within 90 years after its creation.

19 c. A nongeneral power of appointment or a general
20 testamentary power of appointment is invalid unless:

21 (1) When the power is created, it is certain to be irrevocably
22 exercised or otherwise ³[terminates within 90 years after its
23 creation.] to terminate no later than 21 years after the death of
24 an individual then alive; or ³

25 (2) The power is irrevocably exercised or otherwise terminates
26 within 90 years after its creation.

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

31 ¹e. If, in measuring a period from the creation of a trust or
32 other property arrangement, language in a governing instrument
33 ²[(i) seeks to postpone the vesting or termination of any interest
34 or trust until, (ii) seeks to disallow the vesting or termination of
35 any interest or trust beyond, (iii) seeks to require all interests or
36 trusts to vest or terminate no later than, or (iv)] (1) seeks to
37 disallow the vesting or termination of any interest or trust
38 beyond, (2) seeks to postpone the vesting or termination of any

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted October 15, 1990.

² Assembly floor amendments adopted February 21, 1991.

³ Senate amendments adopted in accordance with Governor's
recommendations May 9, 1991.

1 interest or trust until, or (3)² seeks to operate in effect in any
2 similar fashion upon, the later of (a) the expiration of a period of
3 time not exceeding 21 years after the death of the survivor of
4 specified lives in being at the creation of the trust or other
5 property arrangement or (b) the expiration of a period of time
6 that exceeds or might exceed 21 years after the death of the
7 ²[survivor] survivor² of lives in being at the creation of the trust
8 or other property arrangement, ²[then the portion of the] that²
9 language ²[described in (b)]² is inoperative ²[if and]² to the
10 extent it produces a period of time that exceeds 21 years after
11 the death of the survivor of the ²[lives]² specified ²[in the
12 portion of the language described in (a).¹] lives.²

13 2. a. Except as provided in subsections b. and c. of this
14 section and in subsection a. of section 5, the time of creation of a
15 nonvested property interest or a power of appointment is
16 determined under general principles of property law.

17 b. For purposes of this act, if there is a person who alone can
18 exercise a power created by a governing instrument to become
19 the unqualified beneficial owner of (1) a nonvested property
20 interest or (2) a property interest subject to a power of
21 appointment described in subsections b. or c. of section 1, the
22 nonvested property interest or power of appointment is created
23 when the power to become the unqualified beneficial owner
24 terminates.

25 c. For purposes of this act, a nonvested property interest or a
26 power of appointment arising from a transfer of property to a
27 previously funded trust or other existing property arrangement is
28 created when the nonvested property interest or power of
29 appointment in the original contribution was created.

30 3. Upon the petition of an interested person, a court shall
31 reform a disposition in the manner that most closely
32 approximates the transferor's manifested plan of distribution and
33 is within the 90 years allowed by paragraph (2) of subsection a.,
34 subsection b. or subsection c. of section 1 if:

35 a. A nonvested property interest or a power of appointment
36 becomes invalid under section 1;

37 b. A class gift is not but might become invalid under section 1
38 and the time has arrived when the share of any class member is
39 to take effect in possession or enjoyment; or

40 c. A nonvested property interest that is not validated by
41 paragraph (1) of subsection a. of section 1 can vest but not within
42 90 years after its creation.

43 4. This act shall not apply to:

44 a. A nonvested property interest or a power of appointment
45 arising out of a nondonative transfer, except a nonvested
46 property interest or a power of appointment arising out of (1) a
47 premarital or postmarital agreement; (2) a separation or divorce
48 settlement; (3) a spouse's election; (4) a similar arrangement
49 arising out of a prospective, existing, or previous marital

- 1 relationship between the parties; (5) a contract to make or not to
2 revoke a will or trust; (6) a contract to exercise or not to
3 exercise a power of appointment; (7) a transfer in satisfaction of
4 a duty of support; or (8) a reciprocal transfer;
- 5 b. A fiduciary's power relating to the administration or
6 management of assets, including the power of a fiduciary to sell,
7 lease, or mortgage property, and the power of a fiduciary to
8 determine principal and income;
- 9 c. A power to appoint a fiduciary;
- 10 d. A discretionary power of a trustee to distribute principal
11 before termination of a trust to a beneficiary having an
12 indefeasibly vested interest in the income and principal;
- 13 e. A nonvested property interest held by a charity,
14 government, or governmental agency or subdivision, if the
15 nonvested property interest is preceded by an interest held by
16 another charity, government, or governmental agency or
17 subdivision;
- 18 f. A nonvested property interest in or a power of appointment
19 with respect to a trust or other property arrangement forming
20 part of a pension, profit-sharing, stock bonus, health, disability,
21 death benefit, income deferral, or other current or deferred
22 benefit plan for one or more employees, independent contractors,
23 or their beneficiaries or spouses, to which contributions are made
24 for the purpose of distributing to or for the benefit of the
25 participants or their beneficiaries or spouses the property,
26 income, or principal in the trust or other property arrangement,
27 except a nonvested property interest or a power of appointment
28 that is created by an election of a participant or a beneficiary or
29 spouse; or
- 30 g. A property interest, power of appointment, or arrangement
31 that was not subject to the common-law rule against perpetuities
32 or is excluded by another statute of this State.
- 33 5. a. Except as extended in subsection b. of this section, this
34 act applies to a nonvested property interest or a power of
35 appointment that is created on or after the effective date of this
36 act. For purposes of this section only, a nonvested property
37 interest or a power of appointment is created when the power is
38 irrevocably exercised or when a revocable exercise becomes
39 irrevocable.
- 40 b. With respect to a nonvested property interest, or a power of
41 appointment, created before the effective date of this act which
42 is determined in a judicial proceeding, commenced on or after the
43 effective date of this act, to violate this State's rule against
44 perpetuities as that rule existed before the effective date of this
45 act, a court upon the petition of an interested person may reform
46 the disposition in the manner that most closely approximates the
47 transferor's manifested plan of distribution and is within the
48 limits of the rule against perpetuities applicable when the
49 nonvested property interest or power of appointment was created.

1 6. This act shall be known and may be cited as the Uniform
2 Statutory Rule Against Perpetuities.

3 7. This act shall be applied and construed to effectuate its
4 general purpose to make uniform the law with respect to the
5 subject of this act among states enacting it.

6 8. This act supersedes the rule of the common law known as
7 the rule against perpetuities.

8 9. This act shall take effect immediately.

9

10

11 PROPERTY AND ESTATES

12

13

Enacts uniform rule against perpetuities.

1 that is created by an election of a participant or a beneficiary or
2 spouse; or

3 g. A property interest, power of appointment, or arrangement
4 that was not subject to the common-law rule against perpetuities
5 or is excluded by another statute of this State.

6 5. a. Except as extended in subsection b. of this section, this
7 act applies to a nonvested property interest or a power of
8 appointment that is created on or after the effective date of this
9 act. For purposes of this section only, a nonvested property
10 interest or a power of appointment is created when the power is
11 irrevocably exercised or when a revocable exercise becomes
12 irrevocable.

13 b. With respect to a nonvested property interest, or a power of
14 appointment, created before the effective date of this act which
15 is determined in a judicial proceeding, commenced on or after the
16 effective date of this act, to violate this State's rule against
17 perpetuities as that rule existed before the effective date of this
18 act, a court upon the petition of an interested person may reform
19 the disposition in the manner that most closely approximates the
20 transferor's manifested plan of distribution and is within the
21 limits of the rule against perpetuities applicable when the
22 nonvested property interest or power of appointment was created.

23 6. This act shall be known and may be cited as the Uniform
24 Statutory Rule Against Perpetuities.

25 7. This act shall be applied and construed to effectuate its
26 general purpose to make uniform the law with respect to the
27 subject of this act among states enacting it.

28 8. This act supersedes the rule of the common law known as
29 the rule against perpetuities.

30 9. This act shall take effect immediately.

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STATEMENT

34

35 This bill enacts the Uniform Statutory Rule Against
36 Perpetuities and is based on a proposal adopted in 1986 by the
37 National Conference of Commissioners on Uniform State Laws.
38 This bill is to replace the common law rule against perpetuities
39 whereby the validity or invalidity of a nonvested interest is
40 determined on the basis of facts in existence at the time the
41 interest is created. The Uniform Act has been adopted in four
42 states: Florida, Minnesota, Nevada and South Carolina.

43 New Jersey follows the common law which provides that no
44 nonvested interest is valid unless it vests, if at all, not later than
45 21 years after some life in being at the time of the creation of
46 the interest. This bill codifies the common law but also validates
47 an otherwise invalid interest, if it will vest or terminate within
48 90 years after its creation. This bill thus enacts a "wait and see"
49 rule by validating an otherwise invalid interest, if it does not
50 remain unvested at the expiration of 90 years.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2888

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1990

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2888.

This bill proposes the enactment in New Jersey of the Uniform Statutory Rule Against Perpetuities, which is based on a recommendation adopted in 1986 by the National Conference of Commissioners on Uniform State Laws.

The rule against perpetuities was developed under the common law to prevent a person from controlling their property after death and to insure the transferability of property. Under the common law rule against perpetuities, a property interest would not be deemed valid unless it vests not later than 21 years after some life in being at the creation of the interest. New Jersey presently follows the common law rule against perpetuities (see In Re Lattouf's Will 82 N.J. Super. 137 (App. Div., 1965).

The proposed uniform act retains the common law rule that a interest is valid when it is created if it is certain to vest no later than 21 years after the death of an individual alive at the time of the creation of the interest. The uniform act would depart from common law by holding interests, not valid under the common rule against perpetuities, valid provided that the interests do not remain nonvested 90 years after their creation. This approach to the law of perpetuities is known in legal circles as the "wait and see" rule.

The following is a brief description of the provisions of S-2888:

Section 1

Subsection a. of section 1 provides that a nonvested property which is valid under the common law rule against perpetuities is also valid under the proposed uniform act.

Subsection b. of section 1 establishes the "wait and see" rule whereby a interest would be considered valid as long as it does not remain nonvested when the allowable 90 year period expires.

Section 2

Section 2 defines the time when, for purposes of the uniform act, a nonvested property interest is created.

Section 3

Section 3 directs a court, upon petition by an interested party, to reform a disposition within the limits of the allowable 90-year period, in the manner deemed by the court most closely to approximate the transferor's intended plan of distribution.

Section 4

Section 4 identifies those property interests which are excluded from the proposed statutory rule against perpetuities.

Section 5

Section 5 generally provides that the statutory rule against perpetuities is applicable only to interests created on or after its effective date. Courts are, however, authorized to exercise their equitable powers to reform prior instruments which violated the common law rule against perpetuities.

Section 6

Section 6 titles the proposed statute as the "Uniform Statutory Rule Against Perpetuities."

Section 7

Section 7 provides that the act should be applied and construed in a manner consistent with its interpretations in other states which have adopted the act.

Section 8

Section 8 provides that the act supercedes the common law rule against perpetuities.

Section 9

The bill takes effect immediately.

Committee Amendments:

The committee amended section 1 to clarify the status of certain instruments which attempt to postpone the vesting of an interest until the later date of the following 21 years after the death of the survivor of specified lives in being when the trust is created, or 90 years after the creation of the trust.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 25, 1991

SENATE BILL NO. 2888

(Second Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 2888 (Second Reprint) with my objections for reconsideration.

This bill would enact a statutory rule against perpetuities based on the Uniform Statutory Rule Against Perpetuities promulgated by the National Conference of Commissioners on Uniform State Laws. The rule against perpetuities is a common law rule first developed centuries ago. The purpose of the rule is to limit the degree to which a property owner can control the disposition of property after the owner's death through conditions in a will or trust agreement.

Over the years, scholars and practitioners have complained that the rule against perpetuities sometimes unnecessarily frustrates the intent of the person disposing of the property. This bill would replace the common law rule with a more flexible system that will avoid problems with the administration of trusts and estates but will retain the basic purposes behind the rule against perpetuities.

While I support this piece of legislation, I believe the bill must be amended to correct a technical drafting error. Therefore, I herewith return Senate Bill No. 2888 (Second Reprint) and recommend that it be amended as follows:

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 1, Section 1, Lines 22-23: delete "terminates within 90
years after its creation."
insert "to terminate no later
than 21 years after the death
of an individual then alive;
or"

Respectfully,

/s/ James J. Florio

GOVERNOR

[seal]

Attest:

/s/ Andrew Weber

Chief Counsel to the Governor