

1 HB28  
2 125901-1  
3 By Representatives Newton (D) and Poole  
4 RFD: Judiciary  
5 First Read: 01-MAR-11  
6 PFD: 02/25/2011

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: Under existing law, the common law rule  
9 against perpetuities has been adopted by statute in  
10 this state and is applicable to real and personal  
11 property. Generally, an interest in property is  
12 required to vest within a life in being plus 21  
13 years.

14 This bill would substantially adopt the  
15 Uniform Statutory Rule Against Perpetuities  
16 approved by the National Conference of  
17 Commissioners on Uniform State Laws. The  
18 permissible vesting period would be 100 years for  
19 real and personal property other than a trust. The  
20 duration of a trust could not exceed 360 years.

21  
22 A BILL  
23 TO BE ENTITLED  
24 AN ACT

25  
26 To add Chapter 4A to Title 35, Code of Alabama 1975,  
27 to enact the Alabama Uniform Statutory Rule Against

1 Perpetuities; to provide for the vesting period of interests  
2 in real and personal property and for the duration of trusts;  
3 and to repeal Section 35-4-4 of the Code of Alabama 1975.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. Chapter 4A is added to Title 35 of the  
6 Code of Alabama 1975, to read as follows:

7 Chapter 4A.

8 §35-4A-421. STATUTORY RULE AGAINST PERPETUITIES.

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

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

13 (2) the interest either vests or terminates within  
14 100 years after its creation.

15 (b) A general power of appointment not presently  
16 exercisable because of a condition precedent is invalid  
17 unless:

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

22 (2) the condition precedent either is satisfied or  
23 becomes impossible to satisfy within 100 years after its  
24 creation.

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

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

4           (2) the power is irrevocably exercised or otherwise  
5           terminates within 100 years after its creation.

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

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

26                 §35-4A-422. WHEN NONVESTED PROPERTY INTEREST OR  
27          POWER OF APPOINTMENT CREATED.

1 (a) Except as provided in subsections (b), (c), and  
2 (d) and in Section 35-4A-424, the time of creation of a  
3 nonvested property interest or a power of appointment is  
4 determined under general principles of property law.

5 (b) For purposes of this chapter, if there is a  
6 person who alone can exercise a power created by a governing  
7 instrument to become the unqualified beneficial owner of (i) a  
8 nonvested property interest or (ii) a property interest  
9 subject to a power of appointment described in Section  
10 35-4A-221(b) or (c), the nonvested property interest or power  
11 of appointment is created when the power to become the  
12 unqualified beneficial owner terminates.

13 (c) For purposes of this chapter, a nonvested  
14 property interest or a power of appointment arising from a  
15 transfer of property to a previously funded trust or other  
16 existing property arrangement is created when the nonvested  
17 property interest or power of appointment in the original  
18 contribution was created.

19 (d) For purposes of this chapter, if a nongeneral or  
20 testamentary power of appointment is exercised to create  
21 another nongeneral or testamentary power of appointment, every  
22 nonvested property interest or power of appointment created  
23 through the exercise of such other nongeneral or testamentary  
24 power is considered to have been created at the time of the  
25 creation of the first nongeneral or testamentary power of  
26 appointment.

27 §35-4A-423. REFORMATION.

1           Upon the petition of an interested person, a circuit  
2 court shall reform a disposition in the manner that most  
3 closely approximates the transferor's manifested plan of  
4 distribution and is within the 100 years allowed by Section  
5 35-4A-221(a) (2), (b) (2), or (c) (2) or the 360 years allowed by  
6 Section 35-4A-424(9) if:

7           (1) a nonvested property interest or a power of  
8 appointment becomes invalid under Section 35-4A-421 (statutory  
9 rule against perpetuities);

10           (2) a class gift is not but might become invalid  
11 under Section 35-4A-421 (statutory rule against perpetuities)  
12 and the time has arrived when the share of any class member is  
13 to take effect in possession or enjoyment; or

14           (3) a nonvested property interest that is not  
15 validated by Section 35-4A-421(a) (1) can vest but not within  
16 100 years after its creation or in the case of a trust which  
17 meets the requirements of Section 35-4A-424(9), 360 years of  
18 its creation.

19           §35-4A-424. EXCLUSIONS FROM STATUTORY RULE AGAINST  
20 PERPETUITIES.

21           Section 35-4A-421 (statutory rule against  
22 perpetuities) does not apply to:

23           (1) a nonvested property interest or a power of  
24 appointment arising out of a nondonative transfer, except a  
25 nonvested property interest or a power of appointment arising  
26 out of (i) a premarital or postmarital agreement, (ii) a  
27 separation or divorce settlement, (iii) a spouse's election,

1 (iv) a similar arrangement arising out of a prospective,  
2 existing, or previous marital relationship between the  
3 parties, (v) a contract to make or not to revoke a will or  
4 trust, (vi) a contract to exercise or not to exercise a power  
5 of appointment, (vii) a transfer in satisfaction of a duty of  
6 support, or (viii) a reciprocal transfer;

7 (2) a fiduciary's power relating to the  
8 administration or management of assets, including the power of  
9 a fiduciary to sell, lease, or mortgage property, and the  
10 power of a fiduciary to determine principal and income;

11 (3) a power to appoint a fiduciary;

12 (4) a discretionary power of a trustee to distribute  
13 principal before termination of a trust to a beneficiary  
14 having an indefeasibly vested interest in the income and  
15 principal;

16 (5) a nonvested property interest held by a charity,  
17 government, or governmental agency or subdivision, if the  
18 nonvested property interest is preceded by an interest held by  
19 another charity, government, or governmental agency or  
20 subdivision;

21 (6) a nonvested property interest in a trust or  
22 other property arrangement, which trust or other property  
23 arrangement is exclusively for the benefit of one or more  
24 charities, governments, or governmental agencies or  
25 subdivisions;

26 (7) a nonvested property interest in or a power of  
27 appointment with respect to a trust or other property

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

12 (8) a property interest, power of appointment, or  
13 arrangement that was not subject to the common-law rule  
14 against perpetuities or is excluded by another statute of this  
15 state; or

16 (9) a trust, (i) which on its terms does not exceed  
17 360 years in duration, (ii) which is governed by the laws of  
18 this state, and (iii) the instrument governing which includes  
19 a power of the trustee to sell, lease, and mortgage all  
20 property held in trust.

21 §35-4A-425. PROSPECTIVE APPLICATION.

22 This chapter applies to a nonvested property  
23 interest or a power of appointment that is created on or after  
24 January 1, 2012. For purposes of this section, a nonvested  
25 property interest or a power of appointment created by the  
26 exercise of a power of appointment is created when the power



1 is irrevocably exercised or when a revocable exercise becomes  
2 irrevocable.

3 §35-4A-426. SHORT TITLE.

4 This chapter may be cited as the Alabama Uniform  
5 Statutory Rule Against Perpetuities.

6 §35-4A-427. UNIFORMITY OF APPLICATION AND  
7 CONSTRUCTION.

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

12 §35-4A-428.

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

15 Section 2. Section 35-4-4 of the Code of Alabama  
16 1975, is expressly repealed.

17 Section 3. This act takes effect January 1, 2012.