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HOUSE BILL NO. 789

House Amendments in [] — February 14, 2000

A BILL to amend and reenact §§ 55-13.2 and 55-13.3 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-12.1 through 55-12.6, relating to the Uniform Statutory Rule Against Perpetuities.

Patrons—Deeds and Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-13.2 and 55-13.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-12.1 through 55-12.6 as follows:

§ 55-12.1. Uniform 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 subdivision 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 (i) seeks to disallow the vesting or termination of any interest or trust beyond; (ii) seeks to postpone the vesting or termination of any interest or trust until; or (iii) seeks to operate in effect in any similar fashion upon, the later of (a) 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 (b) 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.

§ 55-12.2. When nonvested property interest or power of appointment created.

A. Except as provided in subsections B and C and in § 55-12.5, 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 §§ 55-12.1 through 55-12.6, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsections B or C in § 55-12.1, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

C. For the purposes of §§ 55-12.1 through 55-12.6, 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.

§ 55-12.3. Reformation.

Upon the petition of an interested person, a court of equity in the county or city wherein the affected property or the greater part thereof is located 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 subdivisions A 2, B 2 or C 2 of § 55-12.1 if:

1. A nonvested property interest or a power of appointment becomes invalid under § 55-12.1;

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2. A class gift is not but might become invalid under § 55-12.1 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 subdivision A1 of § 55-12.1 can vest but not within 90 years after its creation.

§ 55-12.4. Exclusions from statutory rule against perpetuities.

Section 55-12.1 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 trustee to distribute principal before termination of a trust to a beneficiary having an indefensibly vested interest in the income and principal;

5. 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;

6. A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of 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, to which contributions are made for the purpose of distributing to or for the benefit of the participants of their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

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

§ 55-12.5. Prospective application.

Sections 55-12.1 through 55-12.6 apply to a nonvested property interest or a power of appointment that is created on or after July 1, 2000. For 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.

§ 55-12.6. Uniformity of application and construction.

Sections 55-12.1 through 55-12.6 shall be applied and construed to effectuate their general purpose to make the law uniform with respect to the rule against perpetuities among states enacting it.

§ 55-13.2. Determination of "lives in being" for purpose of rule against perpetuities.

A. For the purpose of determining whether the terms of an "inter vivos" trust provide for a duration in excess of that allowed under the rule against perpetuities, the determination of "lives in being" shall be made as of the death of the settlor, if the settlor has at his death the unrestricted right, acting alone, to revoke the trust or to have transferred to himself the entire legal and beneficial interest in all property, both principal and income, held in the trust. In the event that the settlor surrenders both such rights at any time prior to his death, the determination of "lives in being" shall be made as of the time that the settlor, upon establishment of the trust or otherwise, surrenders the unrestricted right acting alone to revoke the trust and the unrestricted right acting alone to have transferred to himself the entire legal and beneficial interest in all property, both principal and income, held in the trust.

B. This section shall [~~not~~ only] apply to a nonvested property interest in an inter vivos trust created before July 1, 2000.

§ 55-13.3. Application of the rule against perpetuities to nondonative transfers.

A. Except for the transactions set forth in as provided in paragraph C hereof § 55-12.4, which are governed by the provisions of §§ 55-12.1 through 55-12.6, a nondonative transfer of an interest in property fails, if the interest does not vest, if it ever vests, within the period of the common law rule against perpetuities.

B. If under a donative transfer an interest in property fails because it does not vest or cannot vest within the period of the rule against perpetuities, the transferred property shall be disposed of in the manner which most closely effectuates the transferor's manifested plan of distribution, which is within the limits of the rule against perpetuities. The determination of the transferor's manifested plan of distribution shall be made by a court of equity in the county or city wherein the affected property or the greater part thereof is located.

C. If an interest in property transferred to a charity does not vest within the period of the rule against perpetuities, it fails unless it would divest a valid interest in another charity, in which case it does not fail on the ground of the rule against perpetuities, even though the divestiture does not occur within the period of the rule.

D. B. The provisions of this section (i) *in force on June 30, 2000*, shall apply (i) to all *donative* interests *created on or after July 1, 1982, and before July 1, 2000*, ~~hereafter created~~, and (ii) to all interests heretofore created except insofar as any conveyance or distribution of the affected property has been made, or any detrimental action has been taken, in reliance upon the common law rule against perpetuities. Any interests provided for in a will shall not be considered "created" during the testator's lifetime and (ii) *in force on July 1, 2000*, shall apply to all *nondonative* interests created on or after July 1, 1982.

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