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SENATE BILL NO. 756

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 18, 2013)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact §§ 55-12.4 and 55-13.3 of the Code of Virginia, relating to the rule against perpetuities waiver.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-12.4 and 55-13.3 of the Code of Virginia are amended and reenacted as follows:

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

A. 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 or 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~~ the Commonwealth; or

8. A nonvested interest in or power of appointment over personal property held in trust, or a power of appointment over personal property granted under a trust, if the trust instrument, by its terms, provides that § 55-12.1 shall not apply.

B. The exception to the Uniform Statutory Rule Against Perpetuities under subdivision A 8 shall not extend to real property held in trust. For purposes of this subsection, real property shall not include an interest in a corporation, limited liability company, partnership, business trust, or other entity, even if such entity owns an interest in real property.

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

A. Except for the transactions set forth in § 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. The provisions of this section (i) in force on June 30, 2000, shall apply to all donative interests created on or after July 1, 1982, and before July 1, 2000, and (ii) in force on July 1, 2000, shall apply to all nondonative interests created on or after July 1, 1982.

C. The rule against perpetuities shall not apply to any trust or any interest created in personal property held in such trust, or to any power of appointment over personal property held in such trust, or to any power of appointment over personal property granted under such trust, when the trust instrument, by its terms, provides that the rule against perpetuities shall not apply to such trust.

2. That the provisions of this act are declarative of existing law.

HOUSE SUBSTITUTE

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