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HOUSE BILL NO. 836

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 55.1-124, 55.1-125, 55.1-127, and 55.1-128 of the Code of Virginia, relating to Uniform Statutory Rule Against Perpetuities; trusts; certain nonvested property interests or powers of appointment over property or property interests.

Patrons—Cousins, Clark and Henson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 55.1-124, 55.1-125, 55.1-127, and 55.1-128 of the Code of Virginia are amended and reenacted as follows:

§ 55.1-124. 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 21 years after the death of an individual then alive; or

2. The interest either vests or terminates within 90 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 21 years after the death of an individual then alive; or

2. The condition precedent either is satisfied or becomes impossible to satisfy within 90 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 21 years after the death of an individual then alive; or

2. The power is irrevocably exercised or otherwise terminates within 90 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 21 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 21 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 21 years after the death of the survivor of the specified lives.

F. For any 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 such interest or power is created on or after July 1, 2024, §§ 55.1-124 through 55.1-129 shall apply to such interest or power by substituting "1,000 years" in each instance in which the term "90 years" appears in §§ 55.1-124 through 55.1-129. This subsection shall not extend to a nonvested property interest in, or a power of appointment over, real property held in trust or a power of appointment over real property granted under a trust. For the purposes of this subsection, real property does 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.

§ 55.1-125. When nonvested property interest or power of appointment created.

A. Except as provided in subsections B and C this section and in subsection B of § 55.1-128, 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 §§ 55.1-124 through 55.1-129, 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 subsection B or C of § 55.1-124, the nonvested property interest or power of appointment is created when the

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59 power to become the unqualified beneficial owner terminates.

60 C. For the purposes of §§ 55.1-124 through 55.1-129, a nonvested property interest or a power of
61 appointment arising from a transfer of property to a previously funded trust or other existing property
62 arrangement is created when the nonvested property interest or power of appointment in the original
63 contribution was created.

64 D. *For the purposes of §§ 55.1-124 through 55.1-129, except as provided in subsection B of*
65 *§ 55.1-128, if a nongeneral or testamentary power of appointment is exercised to create another*
66 *nongeneral or testamentary power of appointment, every nonvested property interest or power of*
67 *appointment created through the exercise of such other nongeneral or testamentary power is considered*
68 *to have been created at the time of the creation of the first nongeneral or testamentary power of*
69 *appointment.*

70 **§ 55.1-127. Exclusions from statutory rule against perpetuities.**

71 A. Section 55.1-124 does not apply to:

72 1. A nonvested property interest or a power of appointment arising out of a nondonative transfer,
73 except a nonvested property interest or a power of appointment arising out of (i) a premarital or
74 postmarital agreement; (ii) a separation or divorce settlement; (iii) a spouse's election; (iv) a similar
75 arrangement arising out of a prospective, existing, or previous marital relationship between the parties;
76 (v) a contract to make or not to revoke a will or trust; (vi) a contract to exercise or not to exercise a
77 power of appointment; (vii) a transfer in satisfaction of a duty of support; or (viii) a reciprocal transfer;

78 2. A fiduciary's power relating to the administration or management of assets, including the power of
79 a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and
80 income;

81 3. A power to appoint a fiduciary;

82 4. A discretionary power of trustee to distribute principal before termination of a trust to a
83 beneficiary having an indefensibly vested interest in the income and principal;

84 5. A nonvested property interest held by a charity, government, or governmental agency or
85 subdivision, if the nonvested property interest is preceded by an interest held by another charity,
86 government, or governmental agency or subdivision;

87 6. A nonvested property interest in or a power of appointment with respect to a trust or other
88 property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death
89 benefit, income deferral, or other current or deferred benefit plan for one or more employees,
90 independent contractors, or their beneficiaries or spouses, to which contributions are made for the
91 purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the
92 property, income, or principal in the trust or other property arrangement, except a nonvested property
93 interest or a power of appointment that is created by an election of a participant or a beneficiary or
94 spouse;

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

97 8. A nonvested interest in or power of appointment over personal property held in trust, or a power
98 of appointment over personal property granted under a trust, if the trust instrument, by its terms,
99 provides that § 55.1-124 shall not apply, *provided that such interest or power was created between July*
100 *1, 2000, and June 30, 2024. If a nonvested interest in or power of appointment over personal property*
101 *held in trust, or a power of appointment over personal property granted under a trust, was created on*
102 *or after July 1, 2024, the provisions of the first sentence of this subdivision shall not apply, and any*
103 *terms in the trust instrument providing that § 55.1-124 does not apply shall not be operative and shall*
104 *not prevent the application of § 55.1-124 to such interest or power.*

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

109 **§ 55.1-128. Prospective application.**

110 A. Sections 55.1-124 through 55.1-129 apply to a nonvested property interest or a power of
111 appointment that is created on or after July 1, 2000.

112 B. For purposes of ~~this section~~ *subsection A, the first sentence of subsection F of § 55.1-124, and*
113 *subdivision A 8 of § 55.1-127*, a nonvested property interest or a power of appointment created by the
114 exercise of a power of appointment is created when the power is irrevocably exercised or when a
115 revocable exercise becomes irrevocable.