

HOUSE CS FOR CS FOR SENATE BILL NO. 162(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/00

Referred: Rules

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the rule against perpetuities, nonvested property interests, and
2 powers of appointment; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 13.12.702(d) is amended to read:

5 (d) Survival by 120 hours is not required if

6 (1) the governing instrument contains language dealing explicitly with
7 simultaneous deaths or deaths in a common disaster and that language is operable
8 under the facts of the case;

9 (2) the governing instrument expressly indicates that an individual is
10 not required to survive an event, including the death of another individual, by a
11 specified period or expressly requires the individual to survive the event by a specified
12 period, [;] but survival of the event or the specified period must be established by clear
13 and convincing evidence;

14 (3) the imposition of a 120-hour requirement of survival would cause

1 a nonvested property interest or a power of appointment to fail to qualify for validity
 2 under AS 34.27.051 or 34.27.100 [AS 34.27.050(a)(1), (b)(1), OR (c)(1)] or to become
 3 invalid under AS 34.27.051 or 34.27.100, [AS 34.27.050(a)(2), (b)(2), OR (c)(2);] but
 4 survival must be established by clear and convincing evidence; or

5 (4) the application of a 120-hour requirement of survival to multiple
 6 governing instruments would result in an unintended failure or duplication of a
 7 disposition, [;] but survival must be established by clear and convincing evidence.

8 * **Sec. 2.** AS 13.36.157(a) is amended to read:

9 (a) Unless the terms of the instrument expressly provide otherwise, a trustee
 10 who has the absolute discretion under the terms of a testamentary instrument or
 11 irrevocable inter vivos agreement to invade the principal of a trust for the benefit of
 12 the beneficiary who is eligible or entitled to the income of the trust may exercise
 13 without prior court approval the trustee's discretion by appointing part or all of the
 14 principal of the trust in favor of a trustee of a trust under an instrument other than that
 15 under which the power to invade was created if the exercise of this discretion

16 (1) does not reduce any fixed income interest of an income beneficiary
 17 of the trust;

18 (2) is in favor of the beneficiary of the trust; and

19 (3) does not violate the limitations on validity under AS 34.27.051 or
 20 34.27.100 [AS 34.27.050(a)].

21 * **Sec. 3.** AS 34.27 is amended by adding new sections to read:

22 **Sec. 34.27.051. Statutory rule against perpetuities.** (a) A general or
 23 nongeneral power of appointment not presently exercisable because of a condition
 24 precedent is invalid unless, within a period of 1,000 years after its creation, either the
 25 power is irrevocably exercised or the power terminates. For purposes of this
 26 subsection, the period in which the power must be exercised or the power terminated
 27 is computed from the time of creation of the original power of appointment under
 28 which a subsequent general power of appointment not presently exercisable or a
 29 subsequent nongeneral power of appointment not presently exercisable was created.

30 (b) If a nongeneral power of appointment is exercised to create a new general
 31 power of appointment, all property interests subject to the exercise of that new general

power of appointment are invalid unless, within 1,000 years after the creation of the new general power of appointment, the property interests that are subject to the general power of appointment either vest or terminate.

(c) If a nongeneral power of appointment is exercised to create a new or successive nongeneral power of appointment, all property interests subject to the exercise of that new or successive nongeneral power of appointment are invalid unless, within 1,000 years from the time of creation of the original instrument or conveyance creating the original nongeneral power of appointment that is exercised to create a new or successive nongeneral power of appointment, the property interests that are subject to the nongeneral power of appointment either vest or terminate.

Sec. 34.27.053. Savings provision. A property interest that, under AS 34.27.051, becomes invalid shall, upon the expiration of the 1,000-year period set out in AS 34.27.051,

(1) if income from the property interest is payable

(A) to one person, be distributed to the person to whom the income is then payable;

(B) to more than one person, be distributed to the persons to whom the income is then payable

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the income if shares are not specified;

(2) if income from the property interest is payable in the discretion of a trustee and is payable

(A) to one person, be distributed to the person then eligible to receive the income; or

(B) to more than one person, be distributed to the persons then eligible to receive the income

(i) in the shares to which the persons are entitled to the income; or

(ii) equally among all persons who are entitled to the

1 income if shares are not specified; or

2 (3) when there is no person then living to whom the property interest
3 may be distributed under (1) or (2) of this section, be payable to one or more
4 organizations described in 26 U.S.C. 2055(a) (Internal Revenue Code), or to one or
5 more organizations described in any successor provision to 26 U.S.C. 2055(a), in the
6 shares or proportions that the trustee or trustees then acting may determine.

7 * **Sec. 4.** AS 34.27.070 is amended to read:

8 **Sec. 34.27.070. Application [PROSPECTIVE APPLICATION].** (a) Except
9 as extended by (b) of this section, **the former provisions of** AS 34.27.050 - 34.27.090
10 apply to a nonvested property interest or a power of appointment that is created on or
11 after January 1, 1996, **and before April 2, 1997.** For purposes of this **subsection**
12 [SECTION], a nonvested property interest or a power of appointment created by the
13 exercise of a power of appointment is created when the power is irrevocably exercised
14 or when a revocable exercise becomes irrevocable.

15 (b) If a nonvested property interest or a power of appointment was created
16 before January 1, 1996, and is determined in a judicial proceeding, commenced on or
17 after that date, to violate this state's rule against perpetuities as that rule existed before
18 January 1, 1996, **or if a nonvested property interest or a power of appointment**
19 **was created on or after January 1, 1996, but before April 2, 1997, and is**
20 **determined in a judicial proceeding, commenced on or after that date, to violate**
21 **this state's rule against perpetuities as that rule existed, on or after January 1,**
22 **1996, and before April 2, 1997,** a court, upon the petition of an interested person,
23 may reform the disposition in the manner that most closely approximates the
24 transferor's manifested plan of distribution and is within the limits of the rule against
25 perpetuities applicable when the nonvested property interest or power of appointment
26 was created. **For purposes of this subsection, a nonvested property interest or a**
27 **power of appointment created by the exercise of a power of appointment is**
28 **created when the power is irrevocably exercised or when a revocable exercise**
29 **becomes irrevocable.**

30 * **Sec. 5.** AS 34.27.070 is amended by adding a new subsection to read:

31 (c) The provisions of AS 34.27.051 apply to a trust instrument or conveyance

executed on or after April 2, 1997, if the trust instrument or conveyance creates a contingent power of appointment or nonvested property interest subject to the exercise of a power of appointment that creates a new or successive power of appointment.

* **Sec. 6.** AS 34.27.075 is amended to read:

Sec. 34.27.075. Relationship to [SUPERSESSSION OF] common law rule.

AS 34.27.051 - 34.27.100 [AS 34.27.050 - 34.27.090] supersede the rule of the common law known as the rule against perpetuities. **The common law rule against perpetuities does not apply in this state.**

* **Sec. 7.** AS 34.27 is amended by adding a new section to read:

Sec. 34.27.100. Perpetuities and suspension of the power of alienation. (a)

A future interest or trust is void if, as to property subject to the future interest or trust,

(1) the future interest or trust suspends the power of alienation of the property, the suspension of the power is for a period of at least 30 years after the death of an individual alive at the time of the creation of the future interest or trust, and the suspension of the power of alienation occurs in the document creating the future interest or trust;

(2) the future interest or trust suspends the power of alienation of the property and the suspension of the power is for a period of at least 30 years after termination of a power to revoke the trust;

(3) the future interest or trust suspends the power of alienation of the property, the future interest or trust is created by the exercise of a general power of appointment, whether by will or otherwise, and the suspension of the power is for a period of at least 30 years from the time the power of appointment is exercised; or

(4) the future interest or trust suspends the power of alienation of the property, the future interest or trust is created by the exercise of a power of appointment that is not a general power of appointment, and the suspension of the power is for a period of at least 30 years from the time of creation of the original instrument or conveyance creating the original power of appointment that was exercised to create a new or successive nongeneral power of appointment.

(b) For purposes of (a) of this section, the power of alienation

(1) is suspended if there is no person alive who, alone or in

1 combination with others, can, as to property that is part of the future interest or trust,
 2 convey

3 (A) title to real property in fee; or

4 (B) complete ownership of personal property.

5 (2) is not suspended by a future interest or trust or by an equitable
 6 interest in a trust if

7 (A) the trustee of the trust has power, either express or implied,
 8 to sell the property; or

9 (B) at least one person alive at the time the trust was created
 10 has an unlimited power to terminate the trust.

11 (c) The provisions of (a) of this section do not apply to a transfer

12 (1) made outright or in trust for a charitable purpose;

13 (2) to a literary or charitable organization;

14 (3) to a veterans' memorial organization; or

15 (4) to a cemetery corporation, society, or association.

16 * **Sec. 8.** The uncoded law of the State of Alaska is amended by adding a new section
 17 to read:

18 **RETROACTIVE EFFECT.** AS 34.27.070(c), added by sec. 5 of this Act, is retroactive
 19 to April 2, 1997, and applies to a trust instrument or conveyance executed on or after that date
 20 upon the conditions set out in that subsection.

21 * **Sec. 9.** AS 34.27.050, 34.27.055, 34.27.060, 34.27.065, and 34.27.090 are repealed.

22 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).