

SENATE BILL NO. 162

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/22/99

Referred: Judiciary

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 34.27 is amended by adding new sections to article 1 to read:

5 **Sec. 34.27.040. Abolition of rule against perpetuities.** (a) Unless expressly
6 stated otherwise in the governing instrument, the duration of a nonvested property
7 interest, a general power of appointment not presently exercisable because of a
8 condition precedent, a nongeneral power of appointment, and a general testamentary
9 power of appointment is perpetual and is not subject to termination, limitation, or
10 restriction.

11 (b) This section supersedes the rule of the common law known as the rule
12 against perpetuities.

13 (c) Except as provided in AS 34.27.042, this section does not apply if the
14 governing instrument was entered into before the effective date of this Act.

1 **Sec. 34.27.042. Applicability of AS 34.27.040 to certain nonvested property**
 2 **interests.** (a) AS 34.27.040 applies to an instrument creating a nonvested property
 3 interest in a trust under which all or part of the income or principal of the trust may
 4 be distributed, in the discretion of the trustee, to a person who was living when the
 5 trust was created if the nonvested interest in the trust was executed on or after April 2,
 6 1997.

7 (b) AS 34.27.040 applies to an instrument creating a nonvested property
 8 interest in a trust if the trust instrument was created in another state or country before
 9 April 2, 1997, and the situs of the trust was moved to this state on or after April 2,
 10 1997.

11 * **Sec. 2.** AS 34.27.050(a) is amended to read:

12 (a) A nonvested property interest is invalid unless **the interest is created on**
 13 **or after January 1, 1996, and before the effective date of this Act and**

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

16 (2) the interest either vests or terminates within 90 years after its
 17 creation [; OR

18 (3) THE INTEREST IS IN A TRUST AND ALL OR PART OF THE
 19 INCOME OR PRINCIPAL OF THE TRUST MAY BE DISTRIBUTED, IN THE
 20 DISCRETION OF THE TRUSTEE, TO A PERSON WHO IS LIVING WHEN THE
 21 TRUST IS CREATED].

22 * **Sec. 3.** AS 34.27.050(b) is amended to read:

23 (b) A general power of appointment not presently exercisable because of a
 24 condition precedent is invalid unless **the power of appointment is created on or**
 25 **after January 1, 1996, and before the effective date of this Act and**

26 (1) when the power is created, the condition precedent is certain to be
 27 satisfied or become impossible to satisfy no later than 21 years after the death of an
 28 individual then alive; or

29 (2) the condition precedent either is satisfied or becomes impossible to
 30 satisfy within 90 years after its creation.

31 * **Sec. 4.** AS 34.27.050(c) is amended to read:

1 (c) A nongeneral power of appointment or a general testamentary power of
2 appointment is invalid unless **the power is created on or after January 1, 1996, and**
3 **before the effective date of this Act and**

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

7 (2) the power is irrevocably exercised or otherwise terminates within
8 90 years after its creation.

9 * **Sec. 5.** AS 34.27.070(a) is amended to read:

10 (a) Except as extended by (b) of this section, AS 34.27.050 - 34.27.090 apply
11 to a nonvested property interest or a power of appointment that is created on or after
12 January 1, 1996, **and before the effective date of this Act.** For purposes of this
13 section, a nonvested property interest or a power of appointment created by the
14 exercise of a power of appointment is created when the power is irrevocably exercised
15 or when a revocable exercise becomes irrevocable.

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

17 **Sec. 34.27.075. Supersession of common law rule.** AS 34.27.050 - 34.27.090
18 supersede the rule of the common law known as the rule against perpetuities **to the**
19 **extent provided under AS 34.27.050 - 34.27.090.**

20 * **Sec. 7.** AS 34.27.042, added by sec. 1 of this Act, is retroactive to April 2, 1997, and
21 applies to nonvested property interests in trusts as described in that section.

22 * **Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).