

HOUSE BILL NO. 334

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 5/16/91

Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act adopting the Uniform Statutory Rule Against Perpetuities; and providing for an
2 effective date."

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

4 * **Section 1.** AS 13.11 is amended by adding new sections to read:

5 **ARTICLE 9.**

6 **RULE AGAINST PERPETUITIES [CUSTODY AND DEPOSIT OF WILLS].**

7 **Sec. 13.11.325. STATUTORY RULE AGAINST PERPETUITIES. (a) A**
8 **nonvested property interest is invalid unless**

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

11 **(2) the interest either vests or terminates within 90 years after its creation.**

12 **(b) A general power of appointment not presently exercisable because of a condition**
13 **precedent is invalid unless**

14 **(1) when the power is created, the condition precedent is certain to be satisfied**

1 or become impossible to satisfy no later than 21 years after the death of an individual then alive;
2 or

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

5 (c) A nongeneral power of appointment or a general testamentary power of appointment
6 is invalid unless

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

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

11 (d) In determining whether a nonvested property interest or a power of appointment is
12 valid under (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an
13 individual after the individual's death is disregarded.

14 (e) If, in measuring a period from the creation of a trust or other property arrangement,
15 language in a governing instrument (1) seeks to disallow the vesting or termination of any
16 interest or trust beyond, (2) seeks to postpone the vesting or termination of any interest or trust
17 until, or (3) seeks to operate in effect in any similar fashion upon, the later of the expiration of
18 a period of time not exceeding 21 years after the death of the survivor of specified lives in being
19 at the creation of the trust or other property arrangement or the expiration of a period of time that
20 exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation
21 of the trust or other property arrangement, that language is inoperative to the extent that it
22 produces a period of time that exceeds 21 years after the death of the survivor of the specified
23 lives.

24 Sec. 13.11.330. WHEN NONVESTED PROPERTY INTEREST OR POWER OF
25 APPOINTMENT CREATED. (a) Except as provided in (b) and (c) of this section and in
26 AS 13.11.345(a), the time of creation of a nonvested property interest or a power of appointment
27 is determined under general principles of property law.

28 (b) For purposes of AS 13.11.325 - 13.11.350, if there is a person who alone can exercise
29 a power created by a governing instrument to become the unqualified beneficial owner of (1) a
30 nonvested property interest or (2) a property interest subject to a power of appointment described
31 in AS 13.11.325(b) or (c), the nonvested property interest or power of appointment is created

1 when the power to become the unqualified beneficial owner terminates.

2 (c) For purposes of AS 13.11.325 - 13.11.350, a nonvested property interest or a power
3 of appointment arising from a transfer of property to a previously funded trust or other existing
4 property arrangement is created when the nonvested property interest or power of appointment
5 in the original contribution was created.

6 Sec. 13.11.335. REFORMATION. Upon the petition of an interested person, a court
7 shall reform a disposition in the manner that most closely approximates the transferor's
8 manifested plan of distribution and is within the 90 years allowed by AS 13.11.325(a)(2), (b)(2),
9 or (c)(2) if

10 (1) a nonvested property interest or a power of appointment becomes invalid
11 under AS 13.11.325;

12 (2) a class gift is not but might become invalid under AS 13.11.325 and the time
13 has arrived when the share of any class member is to take effect in possession or enjoyment; or

14 (3) a nonvested property interest that is not validated by AS 13.11.325(a)(1) can
15 vest but not within 90 years after its creation.

16 Sec. 13.11.340. EXCLUSIONS FROM STATUTORY RULE AGAINST
17 PERPETUITIES. AS 13.11.325 does not apply to

18 (1) a nonvested property interest or a power of appointment arising out of a
19 nondonative transfer, except a nonvested property interest or a power of appointment arising out
20 of (A) a premarital or postmarital agreement, (B) a separation or divorce settlement, (C) a
21 spouse's election, (D) a similar arrangement arising out of a prospective, existing, or previous
22 marital relationship between the parties, (E) a contract to make or not to revoke a will or trust,
23 (F) a contract to exercise or not to exercise a power of appointment, (G) a transfer in satisfaction
24 of a duty of support, or (H) a reciprocal transfer;

25 (2) a fiduciary's power relating to the administration or management of assets,
26 including the power of a fiduciary to sell, lease, or mortgage property, and the power of a
27 fiduciary to determine principal and income;

28 (3) a power to appoint a fiduciary;

29 (4) a discretionary power of a trustee to distribute principal before termination of
30 a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

31 (5) a nonvested property interest held by a charity, government, or governmental

1 agency or subdivision, if the nonvested property interest is preceded by an interest held by
2 another charity, government, or governmental agency or subdivision;

3 (6) a nonvested property interest in or a power of appointment with respect to a
4 trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health,
5 disability, death benefit, income deferral, or other current or deferred benefit plan for one or more
6 employees, independent contractors, or their beneficiaries or spouses, to which contributions are
7 made for the purpose of distributing to or for the benefit of the participants or their beneficiaries
8 or spouses the property, income, or principal in the trust or other property arrangement, except
9 a nonvested property interest or a power of appointment that is created by an election of a
10 participant or a beneficiary or spouse; or

11 (7) a property interest, power of appointment, or arrangement that was not subject
12 to the common law rule against perpetuities or is excluded by another statute of this state.

13 Sec. 13.11.345. PROSPECTIVE APPLICATION. (a) Except as extended by (b) of this
14 section, AS 13.11.325 - 13.11.350 apply to a nonvested property interest or a power of
15 appointment that is created on or after January 1, 1992. For purposes of this section, a nonvested
16 property interest or a power of appointment created by the exercise of a power of appointment
17 is created when the power is irrevocably exercised or when a revocable exercise becomes
18 irrevocable.

19 (b) If a nonvested property interest or a power of appointment was created before January
20 1, 1992 and is determined in a judicial proceeding, commenced on or after that date, to violate
21 this state's rule against perpetuities as that rule existed before that date, a court upon the petition
22 of an interested person may reform the disposition in the manner that most closely approximates
23 the transferor's manifested plan of distribution and is within the limits of the rule against
24 perpetuities applicable when the nonvested property interest or power of appointment was created.

25 Sec. 13.11.350. SUPERSESSION OF COMMON LAW RULE. AS 13.11.325 -
26 13.11.345 supersede the rule of the common law known as the rule against perpetuities.

27 * Sec. 2. AS 34.27.010 is repealed.

28 * Sec. 3. AS 13.11.325 - 13.11.350, enacted in sec. 1 of this Act, are covered by AS 13.06.010,
29 requiring that they be construed and applied, among other purposes, to make uniform the laws on this
30 subject among the various jurisdictions enacting them.

31 * Sec. 4. The revisor of statutes shall relocate, without substantive change, AS 13.11.315 and

1 13.11.320 to AS 13.11.214 and 13.11.216, respectively.

2 * Sec. 5. This Act takes effect January 1, 1992.