

CS FOR HOUSE BILL NO. 334 (JUDICIARY)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/27/92

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

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 34.27 is amended by adding new sections to read:

5 ARTICLE 2. RULE AGAINST PERPETUITIES.

6 Sec. 34.27.050. STATUTORY RULE AGAINST PERPETUITIES. (a) A  
7 nonvested property interest is invalid unless

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

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

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

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

1 or

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

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

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

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

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

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

23 Sec. 34.27.055. WHEN NONVESTED PROPERTY INTEREST OR POWER OF  
24 APPOINTMENT CREATED. (a) Except as provided in (b) and (c) of this section and in  
25 AS 34.27.070(a), the time of creation of a nonvested property interest or a power of appointment  
26 is determined under general principles of property law.

27 (b) For purposes of AS 34.27.050 - 34.27.090, if there is a person who alone can exercise  
28 a power created by a governing instrument to become the unqualified beneficial owner of (1) a  
29 nonvested property interest or (2) a property interest subject to a power of appointment described  
30 in AS 34.27.050(b) or (c), the nonvested property interest or power of appointment is created  
31 when the power to become the unqualified beneficial owner terminates.

1 (c) For purposes of AS 34.27.050 - 34.27.090, a nonvested property interest or a power  
2 of appointment arising from a transfer of property to a previously funded trust or other existing  
3 property arrangement is created when the nonvested property interest or power of appointment  
4 in the original contribution was created.

5 Sec. 34.27.060. REFORMATION. Upon the petition of an interested person, a court  
6 shall reform a disposition in the manner that most closely approximates the transferor's  
7 manifested plan of distribution and is within the 90 years allowed by AS 34.27.050(a)(2), (b)(2),  
8 or (c)(2) if

9 (1) a nonvested property interest or a power of appointment becomes invalid  
10 under AS 34.27.050;

11 (2) a class gift is not but might become invalid under AS 34.27.050 and the time  
12 has arrived when the share of any class member is to take effect in possession or enjoyment; or

13 (3) a nonvested property interest that is not validated by AS 34.27.050(a)(1) can  
14 vest but not within 90 years after its creation.

15 Sec. 34.27.065. EXCLUSIONS FROM STATUTORY RULE AGAINST  
16 PERPETUITIES. AS 34.27.050 does not apply to

17 (1) a nonvested property interest or a power of appointment arising out of a  
18 nondonative transfer, except a nonvested property interest or a power of appointment arising out  
19 of

20 (A) a premarital or postmarital agreement;

21 (B) a separation or divorce settlement;

22 (C) a spouse's election;

23 (D) a similar arrangement arising out of a prospective, existing, or  
24 previous marital relationship between the parties;

25 (E) a contract to make or not to revoke a will or trust;

26 (F) a contract to exercise or not to exercise a power of appointment;

27 (G) a transfer in satisfaction of a duty of support; or

28 (H) a reciprocal transfer;

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

- 1 (3) a power to appoint a fiduciary;
- 2 (4) a discretionary power of a trustee to distribute principal before termination of  
3 a trust to a beneficiary having an indefeasibly vested interest in the income and principal;
- 4 (5) a nonvested property interest held by a charity, government, or governmental  
5 agency or subdivision, if the nonvested property interest is preceded by an interest held by  
6 another charity, government, or governmental agency or subdivision;
- 7 (6) a nonvested property interest in or a power of appointment with respect to a  
8 trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health,  
9 disability, death benefit, income deferral, or other current or deferred benefit plan for one or more  
10 employees, independent contractors, or their beneficiaries or spouses, to which contributions are  
11 made for the purpose of distributing to or for the benefit of the participants or their beneficiaries  
12 or spouses the property, income, or principal in the trust or other property arrangement, except  
13 a nonvested property interest or a power of appointment that is created by an election of a  
14 participant or a beneficiary or spouse; or
- 15 (7) a property interest, power of appointment, or arrangement that was not subject  
16 to the common law rule against perpetuities or is excluded by another statute of this state.

17 Sec. 34.27.070. PROSPECTIVE APPLICATION. (a) Except as extended by (b) of this  
18 section, AS 34.27.050 - 34.27.090 apply to a nonvested property interest or a power of  
19 appointment that is created on or after January 1, 1993. For purposes of this section, a nonvested  
20 property interest or a power of appointment created by the exercise of a power of appointment  
21 is created when the power is irrevocably exercised or when a revocable exercise becomes  
22 irrevocable.

23 (b) If a nonvested property interest or a power of appointment was created before  
24 January 1, 1993, and is determined in a judicial proceeding, commenced on or after that date, to  
25 violate this state's rule against perpetuities as that rule existed before January 1, 1993, a court  
26 upon the petition of an interested person may reform the disposition in the manner that most  
27 closely approximates the transferor's manifested plan of distribution and is within the limits of  
28 the rule against perpetuities applicable when the nonvested property interest or power of  
29 appointment was created.

30 Sec. 34.27.075. SUPERSESSION OF COMMON LAW RULE. AS 34.27.050 -  
31 34.27.090 supersede the rule of the common law known as the rule against perpetuities.

1                   Sec. 34.27.090. SHORT TITLE AND UNIFORMITY OF APPLICATION AND  
2 CONSTRUCTION. AS 34.27.050 - 34.27.090 may be cited as the Uniform Statutory Rule  
3 Against Perpetuities and shall be applied and construed to effectuate their general purpose to  
4 make uniform the law with respect to the subject of AS 34.27.050 - 34.27.090 among states  
5 enacting the Uniform Statutory Rule Against Perpetuities.  
6 \* Sec. 2. AS 34.27.010 is repealed.  
7 \* Sec. 3. This Act takes effect January 1, 1993.