

**HOUSE BILL NO. 316**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**EIGHTEENTH LEGISLATURE - SECOND SESSION**

**BY REPRESENTATIVE MOSES**

**Introduced: 1/10/94**

**Referred: Judiciary**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act adopting the Uniform Statutory Rule Against Perpetuities; and providing**  
2 **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 read:**

5 **ARTICLE 2. RULE AGAINST PERPETUITIES.**

6 **Sec. 34.27.050. STATUTORY RULE AGAINST PERPETUITIES. (a)**

7 **A nonvested property interest is invalid unless**

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

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

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

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

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

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

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

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

10 (2) the power is irrevocably exercised or otherwise terminates within  
11 90 years after its creation.

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

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

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

30 (b) For purposes of AS 34.27.050 - 34.27.090, if there is a person who alone  
31 can exercise a power created by a governing instrument to become the unqualified

1 beneficial owner of (1) a nonvested property interest or (2) a property interest subject  
2 to a power of appointment described in AS 34.27.050(b) or (c), the nonvested property  
3 interest or power of appointment is created when the power to become the unqualified  
4 beneficial owner terminates.

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

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

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

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

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

20 Sec. 34.27.065. EXCLUSIONS FROM STATUTORY RULE AGAINST  
21 PERPETUITIES. AS 34.27.050 does not apply to

22 (1) a nonvested property interest or a power of appointment arising out  
23 of a nondonative transfer, except a nonvested property interest or a power of  
24 appointment arising out of

25 (A) a premarital or postmarital agreement;

26 (B) a separation or divorce settlement;

27 (C) a spouse's election;

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

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

31 (F) a contract to exercise or not to exercise a power of

- 1            **appointment;**
- 2                            **(G) a transfer in satisfaction of a duty of support; or**
- 3                            **(H) a reciprocal transfer;**
- 4                            **(2) a fiduciary's power relating to the administration or management**  
5 **of assets, including the power of a fiduciary to sell, lease, or mortgage property, and**  
6 **the power of a fiduciary to determine principal and income;**
- 7                            **(3) a power to appoint a fiduciary;**
- 8                            **(4) a discretionary power of a trustee to distribute principal before**  
9 **termination of a trust to a beneficiary having an indefeasibly vested interest in the**  
10 **income and principal;**
- 11                           **(5) a nonvested property interest held by a charity, government, or**  
12 **governmental agency or subdivision, if the nonvested property interest is preceded by**  
13 **an interest held by another charity, government, or governmental agency or**  
14 **subdivision;**
- 15                           **(6) a nonvested property interest in or a power of appointment with**  
16 **respect to a trust or other property arrangement forming part of a pension, profit-**  
17 **sharing, stock bonus, health, disability, death benefit, income deferral, or other current**  
18 **or deferred benefit plan for one or more employees, independent contractors, or their**  
19 **beneficiaries or spouses, to which contributions are made for the purpose of**  
20 **distributing to or for the benefit of the participants or their beneficiaries or spouses the**  
21 **property, income, or principal in the trust or other property arrangement, except a**  
22 **nonvested property interest or a power of appointment that is created by an election**  
23 **of a participant or a beneficiary or spouse; or**
- 24                           **(7) a property interest, power of appointment, or arrangement that was**  
25 **not subject to the common law rule against perpetuities or is excluded by another**  
26 **statute of this state.**

27                           **Sec. 34.27.070. PROSPECTIVE APPLICATION. (a) Except as extended by**  
28 **(b) of this section, AS 34.27.050 - 34.27.090 apply to a nonvested property interest or**  
29 **a power of appointment that is created on or after January 1, 1996. For purposes of**  
30 **this section, a nonvested property interest or a power of appointment created by the**  
31 **exercise of a power of appointment is created when the power is irrevocably exercised**

1 or when a revocable exercise becomes irrevocable.

2 (b) If a nonvested property interest or a power of appointment was created  
3 before January 1, 1996, and is determined in a judicial proceeding, commenced on or  
4 after that date, to violate this state's rule against perpetuities as that rule existed before  
5 January 1, 1996, a court upon the petition of an interested person may reform the  
6 disposition in the manner that most closely approximates the transferor's manifested  
7 plan of distribution and is within the limits of the rule against perpetuities applicable  
8 when the nonvested property interest or power of appointment was created.

9 Sec. 34.27.075. SUPERSESION OF COMMON LAW RULE.  
10 AS 34.27.050 - 34.27.090 supersede the rule of the common law known as the rule  
11 against perpetuities.

12 Sec. 34.27.090. SHORT TITLE AND UNIFORMITY OF APPLICATION  
13 AND CONSTRUCTION. AS 34.27.050 - 34.27.090 may be cited as the Uniform  
14 Statutory Rule Against Perpetuities and shall be applied and construed to effectuate  
15 their general purpose to make uniform the law with respect to the subject of  
16 AS 34.27.050 - 34.27.090 among states enacting the Uniform Statutory Rule Against  
17 Perpetuities.

18 \* Sec. 2. AS 34.27.010 is repealed.

19 \* Sec. 3. This Act takes effect January 1, 1996.