

HB

334

HOUSE COMMITTEE REPORT

(7)
Date Referred: May 16, 1991

FURTHER REFERRALS:

Date of Committee Action: 4/24/92

The JUDICIARY Committee considered:

HB 334

HOUSE BILL NO. 334

RULE AGAINST PERPETUITIES

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

RECOMMENDATIONS:

be replaced with CS HB 334 (Jud) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) _____

zero fiscal note Law - Legal Services

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
		<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 334

Revision Date: January 21, 1992 Department Affected: Department of Law
 Title: "An Act adopting the Uniform Statutory Rule Against Perpetuities..." BRU: Legal Services
 Component: Operations
 Sponsor: House Rules by the Governor
 Requestor: House Judiciary Committee COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) This bill amends the state's Uniform Probate Code, AS 13.11, to provide for a Uniform Statutory Rule Against Perpetuities. This rule has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Because the bill deals with inheritance issues between private parties it will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 21, 1992
 Approved by Commissioner: Charles E. Gole, Attorney General
 Agency: Department of Law Date: January 21, 19

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Department of Law
 Title: "An Act adopting the Uniform BRU: Legal Services
Statutory Rule Against Perpetuities..." Component: Operations
 Sponsor: By Request of the Governor
 Requestor: Governor's Office COMPONENT SERIAL NO.

		9	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						

REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) This bill amends the state's Uniform Probate Code, AS 13.11, to provide for a Uniform Statutory Rule Against Perpetuities. This rule has been recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). Because the bill deals with inheritance issues between private parties it will not have a fiscal impact on the Department of Law.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 18, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: April 18, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

1410337

WALTER J. HICKEL
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 16, 1991

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to adopt the Uniform Statutory Rule Against Perpetuities, promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

The NCCUSL has promulgated this statutory rule as both a freestanding Act and as part of the Uniform Probate Code (UPC). Since Alaska has enacted the UPC, it behooves us to keep abreast of the national standard -- especially since this new formulation of the rule is better than both the old common law rule and our own statutory modification of it, AS 34.27.010. Moreover, the Alaska Supreme Court has expressed its approval of the "wait and see" approach, a more modern and simpler version of which is proposed in this bill. See Hansen v. Stroecker, 699 P.2d 871 (Alaska 1985).

In its January 23, 1991 publication of the statutory rule, the NCCUSL's Prefatory Note explains the common law rule, its problems, and the improvements made by this statutory rule. A well-known statement of the common law rule sets it out as follows:

No [nonvested property] interest is good unless it must vest, if at all, not later than 21 years after some life in being at the creation of the interest.

In other words, under the common law rule, a nonvested property interest is determined either valid or invalid as of the time of its creation. The actual time of vesting is immaterial. The hypothetical possibility of an interest not vesting, considered at the time of the creation of the interest, determines the validity

of the interest. The NCCUSL's official publication of the Act, with commentary, gives numerous illustrations.

Like most rules of property law, the common law rule against perpetuities has two sides -- a validating side and an invalidating side. With the two sides stated separately, the rule is as follows:

Validating side. A nonvested property interest is valid when it is created (initially valid) if it is then certain to vest or terminate (fail to vest) -- one or the other -- no later than 21 years after the death of an individual then alive.

Invalidating side. A nonvested property interest is invalid when it is created (initially invalid) if there is no such certainty.

Since actual post-interest-creation events are immaterial at common law, even those that are known at the time of the lawsuit in which various parties' rights are being disputed, interests that are likely (and in fact would, if given the chance) to vest well within the period of a life in being plus 21 years are nevertheless invalid if at the time of the interest's creation there was a possibility, no matter how remote, that they might not have done so. This makes the invalidating side of the common law rule harsh: the possibility of events that rarely, if ever, happen can invalidate an interest (and the intent of the donor).

The statutory rule, including Alaska's 1983 version (AS 34.27.010), alters the common law rule by establishing a "wait and see" element. Briefly, Alaska's current approach alleviates the harsh aspects of the common law rule by stressing actual rather than possible events.

However, our causal-relationship method of determining the measuring lives has been shown to be ambiguous and uncertain in application. It is difficult to understand. The NCCUSL's statutory rule in the attached bill alleviates the harshness of the common law rule by allowing an otherwise invalid nonvested property interest a maximum period of time to vest. The Uniform Rule adopts a flat period of 90 years for marking off the maximum period for vesting. This approach grants a nonvested interest a period of time during which it can validly vest or terminate. It also avoids the confusion and ambiguity of identifying actual measuring lives and it avoids the administrative costs of tracing those persons to see when the survivor dies. And it eliminates potentially wasteful litigation.

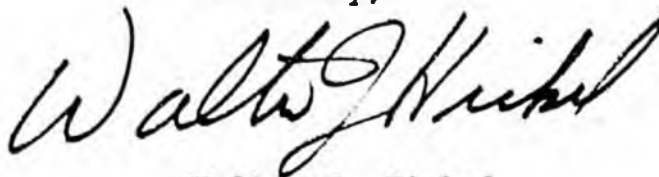
This new rule has been approved by the House of Delegates of the American Bar Association, the Board of Regents of the American

College of Probate Counsel, the Board of Governors of the American College of Real Estate Lawyers, and the Joint Editorial Board for the Uniform Probate Code. By August 1989, this Uniform Statutory Rule Against Perpetuities had already been enacted in nine states. Upon request, the Department of Law will be pleased to furnish the legislature with informative material (one item specifically analyzing Alaska law) written by Professor Lawrence W. Waggoner, of the University of Michigan Law School, and provided by the NCCUSL, along with the NCCUSL's official publication of the Act and its commentary.

I believe that this bill will make a significant improvement in Alaska perpetuities law. It will alleviate the harshness of the common law rule and provide a much more workable and less costly rule than our current AS 34.27.010. The statutory rule embodied in this bill is strongly recommended and supported by national organizations most concerned with and knowledgeable about this area of the law.

The multi-state nature of most family and other relationships in American life urges uniform treatment of these inheritance issues. I urge your favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script, reading "Walter J. Hickel". The signature is written in dark ink and is positioned above the printed name and title.

Walter J. Hickel
Governor

DOUGLAS L. GREGG, Esq.

A PROFESSIONAL CORPORATION

ATTORNEY-AT-LAW

107 MUNICIPAL WAY, SUITE 2

JUNEAU, ALASKA 99801

April 22, 1992

The Honorable Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Re: House Bill 334;
Rule Against Perpetuities

Dear Mr. Donley:

The proposed Uniform Statutory Rule Against Perpetuities is, I understand, in your committee and may be coming up for consideration shortly. I am writing in support of the legislation. I think it would be fine if it were made part of the Uniform Probate Code (Title 13) but it could stand as a separate act, also.

There is common law rule against perpetuities as well as various state enactments including the Alaska statute on that subject and now this proposed legislation. All of these rules have one thing in common: They keep property from being held "in limbo" indefinitely. The ability to reach out "from the cold hand of the grave" and control property for excessive periods of time is very bad public policy and I think we all support the idea that sooner or later property has to vest in some person or entity.

The reason that we don't like some of the existing rules that attempt to remedy the problem is that they are subject to varying interpretations. Typically, the IRS will challenge someone's estate plan on the basis that it is "possible" that the property will not vest soon enough under the rule. The result can be the levying of a huge Federal estate tax. Some of the legislation already on the books around the country helps alleviate the problem of dealing with perpetuities but problems persist.

The Honorable Dave Donley
Page 2
April 22, 1992

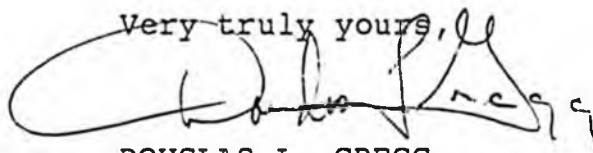
Bar examinations for hapless would-be attorneys may still include complicated questions involving the rule against perpetuities. Maybe HB 334 will even discourage such vicious practices in the preparation of bar examinations! Everyone who ever studied law remembers it as a difficult subject.

Any legislation that lays easy to follow ground rules for deciding whether the rule has been violated in a given document will be a blessing.

The proposed legislation makes it much easier to analyze any particular fact situation thereby resulting in fewer contests, court cases, and heartbreaks.

Thank you for allowing me to comment on this legislation.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas L. Gregg", written over the typed name below.

DOUGLAS L. GREGG

DLG:wmg
Hand Delivery

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DENNIS C. BAILEY
CAROLINE B. CRENNAN
PAUL L. DILLON
THOMAS W. FINDLEY
RICHARD D. MONKMAN
ARTHUR H. PETERSON

February 26, 1992

Hon. Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: HB 334 (Uniform Statutory Rule
Against Perpetuities) -- AARP support

Dear Rep. Donley:

A copy of the November 27, 1991 letter to me from the chair of the Alaska State Legislative Committee of the American Association of Retired Persons, Keith Campbell, supporting HB 334, is attached.

Please schedule the bill for a committee hearing soon.

The bill is highly desirable in two basic respects:

1. It provides a much better, simpler approach to the rule against perpetuities than both the common law rule and Alaska's current modification of that rule (AS 34.27.010). This version of the rule is easier to understand and apply.
2. It helps keep Alaska's Uniform Probate Code up to date.

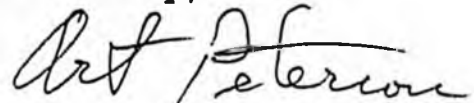
If you would like to have more information on HB 334, please let me know.

Rep. Dave Donley
HB 334, Rule Against Perpetuities
February 26, 1992

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In addition to the hearing, I urge favorable committee action on this bill. Thank you for your consideration.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh

Enclosure: AARP letter

cc: w/enc.: Rep. Max Gruenberg
Alaska State Legislature

cc: w/o enc.: Rep. Fran Ulmer
Alaska State Legislature

Deborah Behr, Supervisor
Legislation/Regulations Section
Alaska Department of Law

Lori Nottingham, Dep. Legis. Liaison
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COORDINATOR
Capital City Task Force
Mr. Joe Allen
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Juneau, AK 99802
(907) 586-6680

November 27, 1991

Mr. Art Peterson
P.O. Box 20444
Juneau, Alaska 99802

Dear Mr Peterson

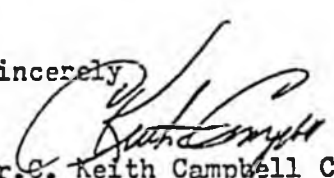
The State Legislative Committee of AARP wishes to inform you that we support HB 334 in its present form.

The Association advocates that states "Adopt the Uniform Probate Code and other probate procedures that simplify, expedite, and reduce the costs of settling an estate, including probating wills, appointment of personal representatives, administrating estates, small estate procedures and fees."

The support of AARP would need to be reevaluated should substantial changes be made in the legislative process. We will have a member of our organization monitor the progress of HB 334.

Thank you for bringing this piece of legislation to our attention.

Sincerely,


Mr. C. Keith Campbell Chmn.