

SENATE BILL NO. 131
INTRODUCED BY MAZUREK

IN THE SENATE

JANUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 11, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1989	PRINTING REPORT.
FEBRUARY 14, 1989	SECOND READING, DO PASS.
FEBRUARY 15, 1989	ENGROSSING REPORT.
FEBRUARY 16, 1989	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 20, 1989	FIRST READING.
MARCH 8, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 13, 1989	THIRD READING, CONCURRED IN. AYES, 96; NOES, 1.
	RETURNED TO SENATE.

IN THE SENATE

MARCH 14, 1989

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 131
2 INTRODUCED BY [Signature]
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING ARTICLE
5 XIII, SECTION 6, OF THE MONTANA CONSTITUTION BY ADOPTING THE
6 UNIFORM STATUTORY RULE AGAINST PERPETUITIES; AND REPEALING
7 SECTIONS 70-1-406 THROUGH 70-1-410, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 NEW SECTION. Section 1. Short title. [This act] may
11 be cited as the "Uniform Statutory Rule Against
12 Perpetuities".

13 NEW SECTION. Section 2. Statutory rule against
14 perpetuities. (1) A nonvested property interest is invalid
15 unless:

16 (a) when the interest is created, it is certain to
17 vest or terminate no later than 21 years after the death of
18 an individual then alive; or

19 (b) the interest either vests or terminates within 90
20 years after its creation.

21 (2) A general power of appointment not presently
22 exercisable because of a condition precedent is invalid
23 unless:

24 (a) when the power is created, the condition precedent
25 is certain to be satisfied or become impossible to satisfy

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

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

6 (3) A nongeneral power of appointment or a general
7 testamentary power of appointment is invalid unless:

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

12 (b) the power is irrevocably exercised or otherwise
13 terminates within 90 years after its creation.

14 (4) In determining whether a nonvested property
15 interest or a power of appointment is valid under subsection
16 (1)(a), (2)(a), or (3)(a), the possibility that a child will
17 be born to an individual after the individual's death is
18 disregarded.

19 NEW SECTION. Section 3. When nonvested property
20 interest or power of appointment created. (1) Except as
21 provided in [Section 5] and subsections (2) and (3) of this
22 section, the time of creation of a nonvested property
23 interest or a power of appointment is determined under
24 general principles of property law.

25 (2) For purposes of [this act], if there is a person

1 who alone can exercise a power created by a governing
 2 instrument to become the unqualified beneficial owner of a
 3 nonvested property interest or a property interest subject
 4 to a power of appointment described in [section 2(2) or
 5 (3)], the nonvested property interest or power of
 6 appointment is created when the power to become the
 7 unqualified beneficial owner terminates.

8 (3) For purposes of [this act], a nonvested property
 9 interest or a power of appointment arising from a transfer
 10 of property to a previously funded trust or other existing
 11 property arrangement is created when the nonvested property
 12 interest or power of appointment in the original
 13 contribution was created.

14 NEW SECTION. Section 4. Reformation. Upon the
 15 petition of an interested person, a court shall reform a
 16 disposition in the manner that most closely approximates the
 17 transferor's manifested plan of distribution and that is
 18 within the 90 years allowed by [section 2(1)(b), (2)(b), or
 19 (3)(b)] if:

20 (1) a nonvested property interest or a power of
 21 appointment becomes invalid under [section 2];

22 (2) a class gift is not but might become invalid under
 23 [section 2] and the time has arrived when the share of any
 24 class member is to take effect in possession or enjoyment;
 25 or

1 (3) a nonvested property interest that is not
 2 validated by [section 2 (1)(a)] can vest but not within 90
 3 years after its creation.

4 NEW SECTION. Section 5. Exclusions from statutory
 5 rule against perpetuities. [Section 2] does not apply to:

6 (1) a nonvested property interest or a power of
 7 appointment arising out of a nondonative transfer, except a
 8 nonvested property interest or a power of appointment
 9 arising out of a:

10 (a) premarital or postmarital agreement;

11 (b) separation or divorce settlement;

12 (c) spouse's election;

13 (d) similar arrangement arising out of a prospective,
 14 existing, or previous marital relationship between the
 15 parties;

16 (e) contract to make or not to revoke a will or trust;

17 (f) contract to exercise or not to exercise a power of
 18 appointment;

19 (g) transfer in satisfaction of a duty of support; or

20 (h) reciprocal transfer;

21 (2) a fiduciary's power relating to the administration
 22 or management of assets, including the power of a fiduciary
 23 to sell, lease, or mortgage property, and the power of a
 24 fiduciary to determine principal and income;

25 (3) the power to appoint a fiduciary;

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

5 (5) a nonvested property interest held by a charity,
6 government, or governmental agency or subdivision if the
7 nonvested property interest is preceded by an interest held
8 by another charity, government, or governmental agency or
9 subdivision;

10 (6) a nonvested property interest in or a power of
11 appointment with respect to a trust or other property
12 arrangement forming part of a pension, profit-sharing, stock
13 bonus, health, disability, death benefit, income deferral,
14 or other current or deferred benefit plan for one or more
15 employees or independent contractors, or their beneficiaries
16 or spouses, to which contributions are made for the purpose
17 of distributing to or for the benefit of the participants or
18 their beneficiaries or spouses the property, income, or
19 principal in the trust or other property arrangement, except
20 a nonvested property interest or a power of appointment that
21 is created by an election of a participant or a beneficiary
22 or spouse; or

23 (7) a property interest, power of appointment, or
24 arrangement that was not subject to the common-law rule
25 against perpetuities or is excluded by another statute of

1 this state.

2 **NEW SECTION. Section 6. Prospective application.** (1)
3 Except as extended by subsection (2), [this act] applies to
4 a nonvested property interest or a power of appointment
5 created on or after [the effective date of this act]. For
6 purposes of this section, a nonvested property interest or a
7 power of appointment created by the exercise of a power of
8 appointment is created when the power is irrevocably
9 exercised or when a revocable exercise becomes irrevocable.

10 (2) If a nonvested property interest or a power of
11 appointment was created before [the effective date of this
12 act] and is determined in a judicial proceeding commenced on
13 or after [the effective date of this act] to violate this
14 state's rule against perpetuities as that rule existed
15 before [the effective date of this act], a court, upon the
16 petition of an interested person, may reform the disposition
17 in the manner that most closely approximates the
18 transferor's manifested plan of distribution and that is
19 within the limits of the rule against perpetuities
20 applicable when the nonvested property interest or power of
21 appointment was created.

22 **NEW SECTION. Section 7. Uniformity of application and**
23 **construction.** [This act] must be applied and construed to
24 effectuate its general purpose to make uniform the law with
25 respect to the subject of [this act] among the states

LC 0922/01

1 enacting it.

2 NEW SECTION. **Section 8. Repealer.** Sections 70-1-406

3 through 70-1-410, MCA, are repealed.

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ON JUDICIARY

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NEW SECTION. **Section 1.** Short title. [This act] may be cited as the "Uniform Statutory Rule Against Perpetuities".

NEW SECTION. **Section 2.** Statutory rule against perpetuities. (1) A nonvested property interest is invalid unless:

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

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

(2) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(a) when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy

no later than 21 years after the death of an individual then alive; or

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

(3) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

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

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

(4) In determining whether a nonvested property interest or a power of appointment is valid under subsection (1)(a), (2)(a), or (3)(a), the possibility that a child will be born to an individual after the individual's death is disregarded.

NEW SECTION. **Section 3.** When nonvested property interest or power of appointment created. (1) Except as provided in [Section 5] and subsections (2) and (3) of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(2) For purposes of [this act], if there is a person

1 who alone can exercise a power created by a governing
2 instrument to become the unqualified beneficial owner of a
3 nonvested property interest or a property interest subject
4 to a power of appointment described in [section 2(2) or
5 (3)], the nonvested property interest or power of
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7 unqualified beneficial owner terminates.

8 (3) For purposes of [this act], a nonvested property
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11 property arrangement is created when the nonvested property
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13 contribution was created.

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15 petition of an interested person, a court shall reform a
16 disposition in the manner that most closely approximates the
17 transferor's manifested plan of distribution and that is
18 within the 90 years allowed by [section 2(1)(b), (2)(b), or
19 (3)(b)] if:

20 (1) a nonvested property interest or a power of
21 appointment becomes invalid under [section 2];

22 (2) a class gift is not but might become invalid under
23 [section 2] and the time has arrived when the share of any
24 class member is to take effect in possession or enjoyment;
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1 (3) a nonvested property interest that is not
2 validated by [section 2 (1)(a)] can vest but not within 90
3 years after its creation.

4 **NEW SECTION. Section 5. Exclusions from statutory**
5 **rule against perpetuities.** [Section 2] does not apply to:

6 (1) a nonvested property interest or a power of
7 appointment arising out of a nondonative transfer, except a
8 nonvested property interest or a power of appointment
9 arising out of a:

10 (a) premarital or postmarital agreement;
11 (b) separation or divorce settlement;
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13 (d) similar arrangement arising out of a prospective,
14 existing, or previous marital relationship between the
15 parties;
16 (e) contract to make or not to revoke a will or trust;
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18 appointment;

19 (g) transfer in satisfaction of a duty of support; or
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21 (2) a fiduciary's power relating to the administration
22 or management of assets, including the power of a fiduciary
23 to sell, lease, or mortgage property, and the power of a
24 fiduciary to determine principal and income;

25 (3) the power to appoint a fiduciary;

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

(5) a nonvested property interest held by a charity, government, or governmental agency or subdivision if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

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

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this state.

NEW SECTION. Section 6. Prospective application. (1)

Except as extended by subsection (2), [this act] applies to a nonvested property interest or a power of appointment created on or after [the effective date of this act]. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

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

NEW SECTION. Section 7. Uniformity of application and construction. [This act] must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of [this act] among the states

SB 0131/02

1 enacting it.

2 NEW SECTION. **Section 8. Repealer.** Sections 70-1-406

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NEW SECTION. Section 6. Prospective application. (1)

Except as extended by subsection (2), [this act] applies to a nonvested property interest or a power of appointment created on or after [the effective date of this act]. For purposes of this section, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

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

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1 enacting it.

2 NEW SECTION. **Section 8. Repealer.** Sections 70-1-406

3 through ~~70-1-410~~ 70-1-418, MCA, are repealed.

-End-