

BILL ANALYSIS

Senate Research Center
77R5412 CAS-F

C.S.S.B. 698
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Jurisprudence
4/3/2001
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently in Texas, a property interest must vest in a person entitled to the property within a certain period of time. This practice, commonly known as the rule against perpetuities, limits the right to control the disposition of trust assets for more than one or two generations by requiring a trust to terminate in the same period of time. Under current federal law, however, it is possible to create a trust that can grow, free of estate, gift, or generation-skipping tax as long as the trust lasts. C.S.S.B. 698 provides that the common-law rule against perpetuities as that rule relates to trusts does not apply in this state and that the rule against perpetuities does not apply to trusts. Additionally, C.S.S.B. 698 amends provisions regarding the vesting period for the rule against perpetuities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.042(a), Property Code, to set forth certain specific common-law rules or doctrines that do not apply in this state.

SECTION 2. Amends Section 112.036, Property Code, as follows:

Sec. 112.036. (a) Provides that the rule against perpetuities, except as provided by Section 121.004 and this section, does not apply to trusts. Deletes existing text regarding charitable trusts.

(b) Provides that no nonvested property interest, interest in a trust, or other disposition of property, including any interest created pursuant to the exercise of a power of appointment, is invalid under any rule against perpetuities during the 360 years following the date the instrument creating the interest becomes irrevocable. Deletes existing text regarding interest in a trust.

(c) Requires certain assets to be distributed by a court having jurisdiction, if, at the end of the 360 years following the date the instrument creating an interest becomes irrevocable, any of the assets subject to the interest have not vested. Requires the court to give effect to the general intent of the settlor of the trust or person exercising a power of appointment in the case of any further trust or other disposition of property made pursuant to the exercise of a power of appointment.

(d) Provides that perpetual charitable trusts are permitted and are not subject to the rule of perpetuities.

SECTION 3. Amends Section 121.004, Property Code, as follows:

Sec. 121.004. New heading: CONTINUATION OF PENSION TRUSTS. Deletes existing text pertaining to the rule against perpetuities.

SECTION 4. (a) Effective date: January 1, 2002. Makes application of this Act contingent upon approval by the voters of the constitutional amendment proposed by the 77th Legislature removing the prohibition against perpetual trusts.

(b) Makes application of the change in law made by this Act to a trust that becomes irrevocable or is judicially modified or reformed to make the provisions of the Act applicable, prospective.

SUMMARY OF COMMITTEE CHANGES

SECTION 1. Differs from the original by amending the previously proposed changes to provisions regarding the application of certain common-law rules in this state.

SECTION 2. Differs from the original by amending the previously proposed changes to provisions regarding the application of the rule against perpetuities to trusts. Adds new Subsections (b) - (d).

SECTION 3. No change.

SECTION 4. Differs from the original by amending the previously proposed provisions regarding the prospective application of this Act.