

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

SESSION LAW 2007-390  
HOUSE BILL 1384

AN ACT TO REPEAL THE STATUTORY RULE AGAINST PERPETUITIES AS IT APPLIES TO TRUSTS CREATED OR ADMINISTERED IN THIS STATE AND CODIFY THE LAW REGARDING THE POWER OF ALIENATION FOR TRUSTS CREATED IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 41 of the General Statutes is amended by adding a new section to read:

**"§ 41-23. Perpetuities and suspension of power of alienation for trusts.**

(a) A trust is void if it suspends the power of alienation of trust property, as that term is defined in G.S. 36C-1-103, for longer than the permissible period. The permissible period is no later than 21 years after the death of an individual then alive or lives then in being plus a period of 21 years.

(b) If the settlor of a revocable trust, as those terms are defined in G.S. 36C-1-103, has an unlimited power to revoke or amend the trust, the permissible period under subsection (a) of this section is computed from the termination of that power.

(c) If a trust is created by exercise of a power of appointment, the permissible period under subsection (a) of this section is computed from the time the power is exercised if the power is a general power even if the power is only exercisable as a testamentary power. In the case of other powers, the permissible period is computed from the time the power is created, but facts at the time the power is exercised shall be considered in determining whether the power of alienation is suspended beyond a life or lives in being at the time of the creation of the power plus 21 years.

(d) The power of alienation is suspended only when there are no persons in being who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personal property.

(e) Notwithstanding subsection (a) of this section, there is no suspension of the power of alienability by a trust or by equitable interests under a trust if the trustee has the power to sell, either expressed or implied, or if there exists an unlimited power to terminate the trust in one or more persons in being.

(f) This section does not apply to a transfer in trust (i) for charitable purposes, as defined in G.S. 36C-4-405; (ii) to a literary or charitable organization; (iii) to a veterans' memorial organization; (iv) to a cemetery corporation, society, or association; or (v) as part of a pension, retirement, insurance, savings, stock bonus, profit sharing, death, disability, or similar plan established by an employer for the benefit of some or all of its

employees for the purpose of accumulating and distributing to such employees the earnings or the principal, or both earnings and principal, of the trust.

(g) This section does not apply to a future interest other than a future interest in trust and, other than as set forth in this section, this section does not modify the common law of the State regarding the power of alienation in this State.

(h) The provisions of G.S. 41-15 and the common law rule against perpetuities do not apply to trusts created or administered in this State."

**SECTION 2.** G.S. 41-15 reads as rewritten:

**"§ 41-15. Statutory rule against perpetuities.**

(a) A Except as otherwise provided in G.S. 41-23, a nonvested property interest is invalid unless:

- (1) 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
- (2) The interest either vests or terminates within 90 years after its creation.

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

- (1) 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
- (2) The condition precedent either is satisfied or becomes impossible to satisfy within 90 years after its creation.

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

- (1) 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
- (2) The power is irrevocably exercised or otherwise terminates within 90 years after its creation.

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

(e) If, in measuring a period from the creation of a ~~trust or other~~ property arrangement, language in a governing instrument:

- (1) Seeks to disallow the vesting or termination of any interest ~~or trust~~ beyond,
- (2) Seeks to postpone the vesting or termination of any interest ~~or trust~~ until, or
- (3) Seeks to operate in effect in any similar fashion upon,

the later of (i) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the ~~trust or other~~ property arrangement or (ii) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the ~~trust or other~~

property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives."

**SECTION 3.** This act is effective when it becomes law and applies to all trusts created before, on, or after that date.

In the General Assembly read three times and ratified this the 1<sup>st</sup> day of August, 2007.

s/ Beverly E. Perdue  
President of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 7:31 p.m. this 19<sup>th</sup> day of August, 2007