

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **Senate Bill 497**

By Senators Trump, Caputo, Chapman, Takubo,

Weld, Plymale, Woelfel, and Nelson

[Introduced January 27, 2023; referred

to the Committee on the Judiciary]

1 A BILL to amend and reenact §36-1A-1, §36-1A-2, §36-1A-5, §36-1A-6, and §36-1A-7 of the Code  
2 of West Virginia, 1931, as amended, all relating to the repeal of the common law rule  
3 against perpetuities by extending it to 1,000 years for trusts.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1A. UNIFORM STATUTORY RULE AGAINST PERPETUITIES.**

**§36-1A-1. Statutory rule against perpetuities.**

1 (a) A nonvested property interest is invalid unless:

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

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

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

7 (1) When the power is created, the condition precedent is certain to be satisfied or become  
8 impossible to satisfy no later than 21 years after the death of an individual then alive; or

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

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

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

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

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

21 (e) As to any trust created on or after July 1, 2023, this article shall apply to any nonvested  
 22 property interest or power of appointment contained in a trust by substituting "1,000 years" in place  
 23 of "90 years" in each place such term appears in this article unless the terms of the trust expressly  
 24 require that all beneficial interests in the trust vest or terminate within a lesser period.

**§36-1A-2. When nonvested property interest or power of appointment created.**

1 (a) Except as provided in subsections (b) and (c) of this section and in subsection (a),  
 2 section five of this article, the time of creation of a nonvested property interest or a power of  
 3 appointment is determined under general principles of property law.

4 (b) For purposes of this article, if there is a person who alone can exercise a power created  
 5 by a governing instrument to become the unqualified beneficial owner of (1) a nonvested property  
 6 interest or (2) a property interest subject to a power of appointment described in subsections (b) or  
 7 (c), section one of this article, the nonvested property interest or power of appointment is created  
 8 when the power to become the unqualified beneficial owner terminates.

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

13 (d) For the purposes of this article, if a nongeneral or testamentary power of appointment is  
 14 exercised to create another nongeneral or testamentary power of appointment, every nonvested  
 15 property interest or power of appointment created through the exercise of such nongeneral or  
 16 testamentary power of appointment is considered to have been created at the time of the creation  
 17 of the first nongeneral or testamentary power of appointment.

**§36-1A-5. Prospective application Application.**

1 (a) Except as extended by subsection ~~(b)~~ (c) of this section, this article applies to a  
 2 nonvested property interest or a power of appointment that is created on or after ~~the effective date~~  
 3 ~~of this article~~ July 1, 2023. For purposes of this section, a nonvested property interest or a power of

4 appointment created by the exercise of a power of appointment is created when the power is  
5 irrevocably exercised or when a revocable exercise becomes irrevocable.

6 (b) This article also applies to a power of appointment that was created before July 1, 2023,  
7 but only to the extent that it remains unexercised on July 1, 2023.

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

**§36-1A-6. Short title.**

1 This article may be cited as the "West Virginia Uniform Statutory Rule Against  
2 Perpetuities".

**§36-1A-7. Uniformity of application and construction.**

1 (a) With respect to any matter relating to the validity of an interest within the rule against  
2 perpetuities, unless a contrary intent appears in the instrument, as a rule of construction it shall be  
3 presumed that the transferor of the interest intended that the interest be valid.

4 (b) The provisions of this article shall be applied and construed to effectuate its general  
5 purpose to make uniform the law with respect to the subject of this article among states enacting it.

NOTE: The purpose of this bill is to repeal the common law rule against perpetuities by extending it to 1,000 years for trusts.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.