

FILED MAR 15 1983

SENATE FILE 433

BY COMMITTEE ON JUDICIARY

Approved 3/14 (p. 170)

(FORMERLY SSB 138)

Substituted for H. F. 510 4/7/83

Passed Senate, Date 2-24-83 (p. 937) Passed House, Date 4-8-83 (p. 1124)

Vote: Ayes 45 Nays 0 Vote: Ayes 89 Nays 4

Approved April 22, 1983 (p. 1395)

A BILL FOR

1 An Act relating to the rule of perpetuities.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 433

S-3236

1 Amend Senate File 433 as follows:

- 2 1. Title, line 1, by striking the word "of" and
- 3 inserting in lieu thereof the word "against".

S-3236 FILED
MARCH 16, 1983

BY DONALD V. DOYLE

Adopted 3/24/83 (p. 937)

SF 433

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1 Section 1. Section 558.68, Code 1983, is amended by
2 striking the section and inserting in lieu thereof the fol-
3 lowing:

4 558.68 PERPETUITIES.

5 1. A nonvested interest in property is not valid unless
6 it must vest, if at all, within twenty-one years after one
7 or more lives in being at the creation of the interest and
8 any relevant period of gestation.

9 2. a. In determining whether a nonvested interest would
10 violate the rule against perpetuities in subsection 1, the
11 period of the rule shall be measured by actual events rather
12 than by possible events, in any case in which that would
13 validate the interest. For this purpose, if an examination
14 of the facts in existence at the time the period of the rule
15 begins to run reveals a life or lives in being within twenty-
16 one years after whose deaths the nonvested interest will
17 necessarily vest, if it ever vests, that life or lives are
18 the measuring lives for purposes of the rule against
19 perpetuities with respect to that nonvested interest and that
20 nonvested interest is valid under the rule.

21 b. If no such life or lives can be ascertained at the
22 time the period of the rule begins to run, the measuring lives
23 for purposes of the rule are all of the following:

24 (1) The creator of the nonvested interest, if the period
25 of the rule begins to run in the creator's lifetime.

26 (2) Those persons alive when the period begins to run,
27 if reasonable in number, who have been selected by the creator
28 of the interest to measure the validity of the nonvested
29 interest or, if none, those persons, if reasonable in number,
30 who have a beneficial interest whether vested or nonvested
31 in the property in which the nonvested interest exists, the
32 grandparents of all such beneficiaries and the issue of such
33 grandparents alive when the period of the rule begins to run,
34 and those persons who are the potential appointees of a special
35 power of appointment exercisable over the property in which

1 the nonvested interests exist who are the grandparents or
2 issue of the grandparents of the donee of the power and alive
3 when the period of the rule begins to run.

4 (3) Those other persons alive when the period of the rule
5 begins to run, if reasonable in number, who are specifically
6 mentioned in describing the beneficiaries of the property
7 in which the nonvested interest exists.

8 (4) The donee of a general or special power of appoint-
9 ment if the donee is alive when the period of the rule begins
10 to run and if the exercise of that power could affect the
11 nonvested interest.

12 3. A nonvested interest that would violate the rule against
13 perpetuities whether its period is measured by actual or by
14 possible events shall be judicially reformed to most closely
15 approximate the intention of the creator of the interest in
16 order that the nonvested interest will vest, even though it
17 may not become possessory, within the period of the rule.

18 4. This section is applicable to all nonvested interests
19 created on, before, or after July 1, 1983.

20 EXPLANATION

21 The bill would adopt the "wait-and-see" analytical approach,
22 to the effect that no nonvested interest would violate the
23 rule if the interest actually vests within the period of the
24 rule. This change would overturn the common law "might have
25 been" approach which has been adopted by the Iowa courts.
26 Under the "might have been" approach, nonvested interests which
27 actually vest within the period of the rule are nonetheless
28 invalidated because on the basis of facts which never occurred
29 but might have occurred, the interest might have vested too
30 remotely.

31 Lastly, the bill would empower the courts to reform a non-
32 vested interest which could not be saved by "wait-and-see"
33 so that it will actually vest within the period of the rule.
34 The court is directed to adopt whatever reformation will most
35 closely approximate the creator's intent. This bill takes
36 effect July 1 following its enactment.

SENATE FILE 433

AN ACT
RELATING TO THE RULE AGAINST PERPETUITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 558.68, Code 1983, is amended by striking the section and inserting in lieu thereof the following:

558.68 PERPETUITIES.

1. A nonvested interest in property is not valid unless it must vest, if at all, within twenty-one years after one or more lives in being at the creation of the interest and any relevant period of gestation.

2. a. In determining whether a nonvested interest would violate the rule against perpetuities in subsection 1, the period of the rule shall be measured by actual events rather than by possible events, in any case in which that would validate the interest. For this purpose, if an examination of the facts in existence at the time the period of the rule begins to run reveals a life or lives in being within twenty-one years after whose deaths the nonvested interest will

necessarily vest, if it ever vests, that life or lives are the measuring lives for purposes of the rule against perpetuities with respect to that nonvested interest and that nonvested interest is valid under the rule.

b. If no such life or lives can be ascertained at the time the period of the rule begins to run, the measuring lives for purposes of the rule are all of the following:

- (1) The creator of the nonvested interest, if the period of the rule begins to run in the creator's lifetime.
- (2) Those persons alive when the period begins to run, if reasonable in number, who have been selected by the creator of the interest to measure the validity of the nonvested interest or, if none, those persons, if reasonable in number, who have a beneficial interest whether vested or nonvested in the property in which the nonvested interest exists, the grandparents of all such beneficiaries and the issue of such grandparents alive when the period of the rule begins to run, and those persons who are the potential appointees of a special power of appointment exercisable over the property in which the nonvested interests exist who are the grandparents or issue of the grandparents of the donee of the power and alive when the period of the rule begins to run.
- (3) Those other persons alive when the period of the rule begins to run, if reasonable in number, who are specifically mentioned in describing the beneficiaries of the property in which the nonvested interest exists.
- (4) The donee of a general or special power of appointment if the donee is alive when the period of the rule begins to run and if the exercise of that power could affect the nonvested interest.

3. A nonvested interest that would violate the rule against perpetuities whether its period is measured by actual or by possible events shall be judicially reformed to most closely approximate the intention of the creator of the interest in

order that the nonvested interest will vest, even though it may not become possessory, within the period of the rule.

4. This section is applicable to all nonvested interests created on, before, or after July 1, 1983.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 433, Seventieth General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 22, 1983

TERRY E. BRANSTAD
Governor