

SENATE FILE 2402  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2110)

(p. 708)  
Passed Senate, Date 3-11-96 Passed House, Date \_\_\_\_\_  
Vote: Ayes 49 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act adopting the uniform statutory rule against perpetuities.  
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2402

1 Section 1. Section 557.7, Code 1995, is amended to read as  
2 follows:

3 557.7 CONTINGENT REMAINDERS.

4 A contingent remainder shall take effect, notwithstanding  
5 any determination of the particular estate, in the same manner  
6 in which it would have taken effect if it had been an  
7 executory devise or a springing or shifting use, and shall, as  
8 well as such limitations, be subject to the rule respecting  
9 contained in section 558.68 regarding remoteness in vesting  
10 known as the rule against perpetuities, exclusive of any other  
11 supposed rule respecting limitations to successive generations  
12 or double possibilities.

13 Sec. 2. Section 558.68, Code 1995, is amended by striking  
14 the section and inserting in lieu thereof the following:

15 558.68 PERPETUITIES.

16 1. STATUTORY RULE AGAINST PERPETUITIES.

17 a. VALIDITY OF NONVESTED PROPERTY INTEREST. A nonvested  
18 property interest is invalid unless either of the following  
19 applies:

20 (1) When the interest is created, it is certain to vest or  
21 terminate no later than twenty-one years after the death of an  
22 individual then alive.

23 (2) The interest either vests or terminates within ninety  
24 years after its creation.

25 b. VALIDITY OF GENERAL POWER OF APPOINTMENT SUBJECT TO A  
26 CONDITION PRECEDENT. A general power of appointment not  
27 presently exercisable because of a condition precedent is  
28 invalid unless either of the following applies:

29 (1) When the power is created, the condition precedent is  
30 certain to be satisfied or becomes impossible to satisfy no  
31 later than twenty-one years after the death of an individual  
32 then alive.

33 (2) The condition precedent either is satisfied or becomes  
34 impossible to satisfy within ninety years after its creation.

35 c. VALIDITY OF NONGENERAL OR TESTAMENTARY POWER OF

1 APPOINTMENT. A nongeneral power of appointment or a general  
2 testamentary power of appointment is invalid unless either of  
3 the following applies:

4 (1) When the power is created, it is certain to be  
5 irrevocably exercised or otherwise to terminate no later than  
6 twenty-one years after the death of an individual then alive.

7 (2) The power is irrevocably exercised or otherwise  
8 terminates within ninety years after its creation.

9 d. POSSIBILITY OF POST-DEATH CHILD DISREGARDED. In  
10 determining whether a nonvested property interest or a power  
11 of appointment is valid under paragraph "a", subparagraph (1),  
12 paragraph "b", subparagraph (1), or paragraph "c",  
13 subparagraph (1), the possibility that a child will be born to  
14 an individual after the individual's death is disregarded.

15 e. EFFECT OF CERTAIN "LATER-OF" TYPE LANGUAGE. The  
16 language in a governing instrument is inoperative to the  
17 extent it produces a period of time that exceeds twenty-one  
18 years after the death of the survivor of the specified lives,  
19 if, in measuring a period from the creation of a trust or  
20 other property arrangement, the language seeks to disallow the  
21 vesting or termination of any interest or trust beyond, or  
22 seeks to postpone the vesting or termination of any interest  
23 or trust until, or seeks to operate in effect in any similar  
24 fashion upon, the later of either of the following:

25 (1) The expiration of a period of time not exceeding  
26 twenty-one years after the death of the survivor of specified  
27 lives in being at the creation of the trust or other property  
28 arrangement.

29 (2) The expiration of a period of time that exceeds or  
30 might exceed twenty-one years after the death of the survivor  
31 of lives in being at the creation of the trust or other  
32 property arrangement.

33 2. WHEN NONVESTED PROPERTY INTEREST OR POWER OF  
34 APPOINTMENT CREATED.

35 a. Except as provided in paragraphs "b" and "c" and in

1 subsection 5, paragraph "a", the time of creation of a  
2 nonvested property interest or a power of appointment is  
3 determined under general principles of property law.

4 b. For purposes of this section, if there is a person who  
5 alone can exercise a power created by a governing instrument  
6 to become the unqualified beneficial owner of a nonvested  
7 property interest or a property interest subject to a power of  
8 appointment described in subsection 1, paragraphs "b" and "c",  
9 the nonvested property interest or power of appointment is  
10 created when the power to become the unqualified beneficial  
11 owner terminates.

12 c. For purposes of this section, a nonvested property  
13 interest or a power of appointment arising from a transfer of  
14 property to a previously funded trust or other existing  
15 property arrangement is created when the nonvested property  
16 interest or power of appointment in the original contribution  
17 was created.

18 3. REFORMATION. Upon the petition of an interested  
19 person, a court shall reform a disposition in the manner that  
20 most closely approximates the transferor's manifested plan of  
21 distribution and is within the ninety years allowed by  
22 subsection 1, paragraph "a", subparagraph (2), paragraph "b",  
23 subparagraph (2), and paragraph "c", subparagraph (2), if any  
24 of the following applies:

25 a. A nonvested property interest or a power of appointment  
26 becomes invalid under subsection 1.

27 b. A class gift is not but might become invalid under  
28 subsection 1 and the time has arrived when the share of any  
29 class member is to take effect in possession or enjoyment.

30 c. A nonvested property interest that is not validated by  
31 subsection 1, paragraph "a", subparagraph (1), can vest but  
32 not within ninety years after its creation.

33 4. EXCLUSIONS FROM RULE AGAINST PERPETUITIES. Subsection  
34 1 does not apply to any of the following:

35 a. A nonvested property interest or a power of appointment

1 arising out of a nondonative transfer, except a nonvested  
2 property interest or a power of appointment arising out of any  
3 of the following:

4 (1) A premarital or postmarital agreement.

5 (2) A separation or divorce settlement.

6 (3) A spouse's election.

7 (4) A similar arrangement arising out of a prospective,  
8 existing, or previous marital relationship between the  
9 parties.

10 (5) A contract to make or not to revoke a will or trust.

11 (6) A contract to exercise or not to exercise a power of  
12 appointment.

13 (7) A transfer in satisfaction of a duty of support.

14 (8) A reciprocal transfer.

15 b. A fiduciary's power relating to the administration or  
16 management of assets, including the power of a fiduciary to  
17 sell, lease, or mortgage property, and the power of a  
18 fiduciary to determine principal and income.

19 c. A power to appoint a fiduciary.

20 d. A discretionary power of a trustee to distribute  
21 principal before termination of a trust to a beneficiary  
22 having an indefeasibly vested interest in the income and  
23 principal.

24 e. A nonvested property interest held by a charity,  
25 government, or governmental agency or subdivision, if the  
26 nonvested property interest is preceded by an interest held by  
27 another charity, government, or governmental agency or  
28 subdivision.

29 f. A nonvested property interest in or a power of ap-  
30 pointment with respect to a trust or other property  
31 arrangement forming part of a pension, profit-sharing, stock  
32 bonus, health, disability, death benefit, income deferral, or  
33 other current or deferred benefit plan for one or more  
34 employees, independent contractors, or their beneficiaries or  
35 spouses, to which contributions are made for the purpose of

1 distributing to or for the benefit of the participants or  
2 their beneficiaries or spouses the property, income, or  
3 principal in the trust or other property arrangement, except a  
4 nonvested property interest or a power of appointment that is  
5 created by an election of a participant or a beneficiary or  
6 spouse.

7 g. A property interest, power of appointment, or ar-  
8 rangement that was not subject to the common-law rule against  
9 perpetuities or is excluded by another statute.

10 5. PROSPECTIVE APPLICATION.

11 a. Except as extended by paragraph "b", this section  
12 applies to a nonvested property interest or a power of  
13 appointment that is created on or after the effective date of  
14 this section. For purposes of this subsection, a nonvested  
15 property interest or a power of appointment created by the  
16 exercise of a power of appointment is created when the power  
17 is irrevocably exercised or when a revocable exercise becomes  
18 irrevocable.

19 b. If a nonvested property interest or a power of ap-  
20 pointment was created before the effective date of this  
21 section and is determined in a judicial proceeding, commenced  
22 on or after the effective date of this section, to violate  
23 this state's rule against perpetuities as that rule existed  
24 before the effective date of this section, a court upon the  
25 petition of an interested person may reform the disposition in  
26 the manner that most closely approximates the transferor's  
27 manifested plan of distribution and is within the limits of  
28 the rule against perpetuities applicable when the nonvested  
29 property interest or power of appointment was created.

30 6. SHORT TITLE. This section may be cited as the "Uniform  
31 Statutory Rule Against Perpetuities".

32 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This  
33 section shall be applied and construed to effectuate its  
34 general purpose to make uniform the law with respect to the  
35 subject of this section among states enacting the uniform

1 statutory rule against perpetuities.

2 EXPLANATION

3 This bill provides for the enactment of the uniform  
4 statutory rule against perpetuities. The uniform rule has  
5 been adopted in 25 states as of December 1995, and is intended  
6 to promote uniformity in application and predictability in  
7 outcome regarding the validity or invalidity of future  
8 interests in property.

9 The common-law rule against perpetuities is aimed at  
10 invalidating interests in property that are intended to belong  
11 to an individual at some point in the future, but for which  
12 the actual determination of ownership cannot be or will not be  
13 accomplished within a specified time period. The basic rule  
14 states that a nonvested interest in property is invalid unless  
15 it must vest, if at all, within 21 years after one or more  
16 lives in being at the creation of the interest and any  
17 relevant period of gestation. Iowa Code section 558.68  
18 contains a version of this common-law rule which states that  
19 the rule shall be measured by actual events rather than by  
20 possible events in situations which would provide validation,  
21 and further provides for judicial reformation of a nonvested  
22 interest violating the rule to most closely approximate the  
23 intention of the creator of the interest and provide for  
24 vesting.

25 The uniform rule builds upon this emphasis on actual rather  
26 than theoretical events, and judicial reformation. The  
27 uniform rule provides that a nonvested interest is invalid  
28 unless either the interest when created is certain to vest or  
29 terminate within the lifetime of an individual then alive or  
30 within 21 years after the death of that individual, or the  
31 interest either vests or terminates within 90 years after its  
32 creation. A 90-year interval is regarded in the rule as a  
33 sufficient length of time for a nonvested future interest to  
34 vest. If vesting does not occur within that time frame, the  
35 interest is invalidated. This applies to powers of

1 appointment in addition to traditional, nondelegated  
2 interests.

3 The rule also provides for a reformation function similar  
4 in spirit to Code section 558.68. A court can reform an  
5 interest which would otherwise be considered invalid by vest-  
6 ing it within the 90-year time period. Certain nonvested  
7 property interests or powers of appointment to which the rule  
8 does not apply are set out.

9 The bill provides that the uniform rule will apply  
10 prospectively to a nonvested property interest or a power of  
11 appointment created on or after the effective date of this  
12 section. For nonvested property interests or powers of  
13 appointment created before the effective date, determined in a  
14 judicial proceeding commenced on or after the effective date  
15 of this section to violate the then-applicable rule against  
16 perpetuities, judicial reformation to conform to the  
17 transferor's manifested plan of distribution may be available  
18 upon petition.

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Redfern  
Maddox  
Giannetto  
Vilsack  
Neuhouser

SSB-2110  
Judiciary

Succeeded By  
SENATE/HOUSE FILE HF 2402  
BY (PROPOSED COMMISSION ON  
UNIFORM STATE LAWS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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25 b. VALIDITY OF GENERAL POWER OF APPOINTMENT SUBJECT TO A  
26 CONDITION PRECEDENT. A general power of appointment not  
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21 section and is determined in a judicial proceeding, commenced  
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