

# Senate Study Bill 2110

## Conference Committee Text

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1 1 Section 1. Section [557.7](#), Code 1995, is amended to read as  
1 2 follows:

1 3 557.7 CONTINGENT REMAINDERS.

1 4 A contingent remainder shall take effect, notwithstanding  
1 5 any determination of the particular estate, in the same manner  
1 6 in which it would have taken effect if it had been an  
1 7 executory devise or a springing or shifting use, and shall, as  
1 8 well as such limitations, be subject to the rule

~~respecting~~

1 9 contained in section 558.68 regarding remoteness in vesting  
1 10 known as the rule against perpetuities, exclusive of any other  
1 11 supposed rule respecting limitations to successive generations  
1 12 or double possibilities.

1 13 Sec. 2. Section [558.68](#), Code 1995, is amended by striking  
1 14 the section and inserting in lieu thereof the following:

1 15 558.68 PERPETUITIES.

1 16 1. STATUTORY RULE AGAINST PERPETUITIES.

1 17 a. VALIDITY OF NONVESTED PROPERTY INTEREST. A nonvested  
1 18 property interest is invalid unless either of the following  
1 19 applies:

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

1 23 (2) The interest either vests or terminates within ninety  
1 24 years after its creation.

1 25 b. VALIDITY OF GENERAL POWER OF APPOINTMENT SUBJECT TO A  
1 26 CONDITION PRECEDENT. A general power of appointment not  
1 27 presently exercisable because of a condition precedent is  
1 28 invalid unless either of the following applies:

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

1 33 (2) The condition precedent either is satisfied or becomes  
1 34 impossible to satisfy within ninety years after its creation.

1 35 c. VALIDITY OF NONGENERAL OR TESTAMENTARY POWER OF  
2 1 APPOINTMENT. A nongeneral power of appointment or a general  
2 2 testamentary power of appointment is invalid unless either of  
2 3 the following applies:

2 4 (1) When the power is created, it is certain to be  
2 5 irrevocably exercised or otherwise to terminate no later than  
2 6 twenty-one years after the death of an individual then alive.

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

2 9 d. POSSIBILITY OF POST-DEATH CHILD DISREGARDED. In  
2 10 determining whether a nonvested property interest or a power  
2 11 of appointment is valid under paragraph "a", subparagraph (1),  
2 12 paragraph "b", subparagraph (1), or paragraph "c",  
2 13 subparagraph (1), the possibility that a child will be born to  
2 14 an individual after the individual's death is disregarded.

2 15 e. EFFECT OF CERTAIN "LATER-OF" TYPE LANGUAGE. The  
2 16 language in a governing instrument is inoperative to the  
2 17 extent it produces a period of time that exceeds twenty-one  
2 18 years after the death of the survivor of the specified lives,

2 19 if, in measuring a period from the creation of a trust or  
2 20 other property arrangement, the language seeks to disallow the  
2 21 vesting or termination of any interest or trust beyond, or  
2 22 seeks to postpone the vesting or termination of any interest  
2 23 or trust until, or seeks to operate in effect in any similar  
2 24 fashion upon, the later of either of the following:

2 25 (1) The expiration of a period of time not exceeding  
2 26 twenty-one years after the death of the survivor of specified  
2 27 lives in being at the creation of the trust or other property  
2 28 arrangement.

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

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

2 35 a. Except as provided in paragraphs "b" and "c" and in  
3 1 subsection 5, paragraph "a", the time of creation of a  
3 2 nonvested property interest or a power of appointment is  
3 3 determined under general principles of property law.

3 4 b. For purposes of this section, if there is a person who  
3 5 alone can exercise a power created by a governing instrument  
3 6 to become the unqualified beneficial owner of a nonvested  
3 7 property interest or a property interest subject to a power of  
3 8 appointment described in subsection 1, paragraphs "b" and "c",  
3 9 the nonvested property interest or power of appointment is  
3 10 created when the power to become the unqualified beneficial  
3 11 owner terminates.

3 12 c. For purposes of this section, a nonvested property  
3 13 interest or a power of appointment arising from a transfer of  
3 14 property to a previously funded trust or other existing  
3 15 property arrangement is created when the nonvested property  
3 16 interest or power of appointment in the original contribution  
3 17 was created.

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

3 25 a. A nonvested property interest or a power of appointment  
3 26 becomes invalid under subsection 1.

3 27 b. A class gift is not but might become invalid under  
3 28 subsection 1 and the time has arrived when the share of any  
3 29 class member is to take effect in possession or enjoyment.

3 30 c. A nonvested property interest that is not validated by  
3 31 subsection 1, paragraph "a", subparagraph (1), can vest but  
3 32 not within ninety years after its creation.

3 33 4. EXCLUSIONS FROM RULE AGAINST PERPETUITIES. Subsection  
3 34 1 does not apply to any of the following:

3 35 a. A nonvested property interest or a power of appointment  
4 1 arising out of a nondonative transfer, except a nonvested  
4 2 property interest or a power of appointment arising out of any  
4 3 of the following:

4 4 (1) A premarital or postmarital agreement.

4 5 (2) A separation or divorce settlement.

4 6 (3) A spouse's election.

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

4 10 (5) A contract to make or not to revoke a will or trust.

4 11 (6) A contract to exercise or not to exercise a power of  
4 12 appointment.

4 13 (7) A transfer in satisfaction of a duty of support.

4 14 (8) A reciprocal transfer.

4 15 b. A fiduciary's power relating to the administration or

4 16 management of assets, including the power of a fiduciary to  
4 17 sell, lease, or mortgage property, and the power of a  
4 18 fiduciary to determine principal and income.

4 19 c. A power to appoint a fiduciary.

4 20 d. A discretionary power of a trustee to distribute  
4 21 principal before termination of a trust to a beneficiary  
4 22 having an indefeasibly vested interest in the income and  
4 23 principal.

4 24 e. A nonvested property interest held by a charity,  
4 25 government, or governmental agency or subdivision, if the  
4 26 nonvested property interest is preceded by an interest held by  
4 27 another charity, government, or governmental agency or  
4 28 subdivision.

4 29 f. A nonvested property interest in or a power of ap-  
4 30 pointment with respect to a trust or other property  
4 31 arrangement forming part of a pension, profit-sharing, stock  
4 32 bonus, health, disability, death benefit, income deferral, or  
4 33 other current or deferred benefit plan for one or more  
4 34 employees, independent contractors, or their beneficiaries or  
4 35 spouses, to which contributions are made for the purpose of  
5 1 distributing to or for the benefit of the participants or  
5 2 their beneficiaries or spouses the property, income, or  
5 3 principal in the trust or other property arrangement, except a  
5 4 nonvested property interest or a power of appointment that is  
5 5 created by an election of a participant or a beneficiary or  
5 6 spouse.

5 7 g. A property interest, power of appointment, or ar-  
5 8 rangement that was not subject to the common-law rule against  
5 9 perpetuities or is excluded by another statute.

5 10 5. PROSPECTIVE APPLICATION.

5 11 a. Except as extended by paragraph "b", this section  
5 12 applies to a nonvested property interest or a power of  
5 13 appointment that is created on or after the effective date of  
5 14 this section. For purposes of this subsection, a nonvested  
5 15 property interest or a power of appointment created by the  
5 16 exercise of a power of appointment is created when the power  
5 17 is irrevocably exercised or when a revocable exercise becomes  
5 18 irrevocable.

5 19 b. If a nonvested property interest or a power of ap-  
5 20 pointment was created before the effective date of this  
5 21 section and is determined in a judicial proceeding, commenced  
5 22 on or after the effective date of this section, to violate  
5 23 this state's rule against perpetuities as that rule existed  
5 24 before the effective date of this section, a court upon the  
5 25 petition of an interested person may reform the disposition in  
5 26 the manner that most closely approximates the transferor's  
5 27 manifested plan of distribution and is within the limits of  
5 28 the rule against perpetuities applicable when the nonvested  
5 29 property interest or power of appointment was created.

5 30 6. SHORT TITLE. This section may be cited as the "Uniform  
5 31 Statutory Rule Against Perpetuities".

5 32 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This  
5 33 section shall be applied and construed to effectuate its  
5 34 general purpose to make uniform the law with respect to the  
5 35 subject of this section among states enacting the uniform  
6 1 statutory rule against perpetuities.

6 2 EXPLANATION

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

6 9 The common-law rule against perpetuities is aimed at  
6 10 invalidating interests in property that are intended to belong  
6 11 to an individual at some point in the future, but for which  
6 12 the actual determination of ownership cannot be or will not be

6 13 accomplished within a specified time period. The basic rule  
6 14 states that a nonvested interest in property is invalid unless  
6 15 it must vest, if at all, within 21 years after one or more  
6 16 lives in being at the creation of the interest and any  
6 17 relevant period of gestation. Iowa Code section 558.68  
6 18 contains a version of this common-law rule which states that  
6 19 the rule shall be measured by actual events rather than by  
6 20 possible events in situations which would provide validation,  
6 21 and further provides for judicial reformation of a nonvested  
6 22 interest violating the rule to most closely approximate the  
6 23 intention of the creator of the interest and provide for  
6 24 vesting.

6 25 The uniform rule builds upon this emphasis on actual rather  
6 26 than theoretical events, and judicial reformation. The  
6 27 uniform rule provides that a nonvested interest is invalid  
6 28 unless either the interest when created is certain to vest or  
6 29 terminate within the lifetime of an individual then alive or  
6 30 within 21 years after the death of that individual, or the  
6 31 interest either vests or terminates within 90 years after its  
6 32 creation. A 90-year interval is regarded in the rule as a  
6 33 sufficient length of time for a nonvested future interest to  
6 34 vest. If vesting does not occur within that time frame, the  
6 35 interest is invalidated. This applies to powers of  
7 1 appointment in addition to traditional, nondelegated  
7 2 interests.

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

7 9 The bill provides that the uniform rule will apply  
7 10 prospectively to a nonvested property interest or a power of  
7 11 appointment created on or after the effective date of this  
7 12 section. For nonvested property interests or powers of  
7 13 appointment created before the effective date, determined in a  
7 14 judicial proceeding commenced on or after the effective date  
7 15 of this section to violate the then-applicable rule against  
7 16 perpetuities, judicial reformation to conform to the  
7 17 transferor's manifested plan of distribution may be available  
7 18 upon petition.

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