

SUBJECT: Modifying application of the rule against perpetuities for trust interests

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Hunter, Alonzo, Branch, Hartnett, Lewis, Martinez

0 nays

5 absent — Hughes, Jackson, Leibowitz, Madden, Woolley

WITNESSES: For — Deborah Cox, Texas Bankers Association, Financial Services Division; Amy Jetel; John Round; Elizabeth Schurig; (*Registered, but did not testify*: Leslie Amann, Sentinel Trust Company (Texas Bankers Association, Wealth Management and Trust Division); John Brigance, Texas Bankers Association, Wealth Management and Trust Division; Paul Youngdale)

Against — Steve Saunders; Mark Schreiber; (*Registered, but did not testify*: Raif Calvert, Independent Colleges and Universities of Texas; Brooke Hardie; Jerry Jones

BACKGROUND: The rule against perpetuities requires that certain future interests, including certain trust interests, vest not later than 21 years after the death of the last identifiable individual living at the time the interest was created. Under current law, the rule against perpetuities does not apply to charitable trusts.

DIGEST: HB 990 would modify the rule against perpetuities to require that an interest in a trust would have to vest, if at all, not later than 200 years after the effective date of a trust if:

- the trust's effective date was on or after September 1, 2009, or;
- the trust instrument, if its effective date was before September 1, 2009, specifically provided that an interest in the trust would vest under the provisions of the bill allowing for a trust to vest not later than 200 years after the effective date.

The bill would add a provision to Property Code, sec. 112.036 that the effective date of a trust would be the date that the trust became irrevocable.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

HB 990 would increase Texas' competitiveness in the estate planning and trust planning businesses by increasing the rule against perpetuities period for certain trust interests from 21 to 200 years. Currently, Texans who wish to keep property in trust within the jurisdiction in this state lack the flexibility afforded by modern estate planning practices to arrange their affairs and provide for disposition of trust property. At least 21 other states have modified or abolished the common law rule against perpetuities, resulting in an exodus of trust-related businesses and jobs from Texas to states with more relaxed perpetuities statutes. The bill would level the playing field between Texas and other states and attract business and jobs related to estate planning and trust management.

HB 990 also would clarify the rule against perpetuities to make it easier to comprehend. The current statutory language is antiquated and difficult for non-attorneys to understand. While this benefits lawyers who charge fees to interpret the rule against perpetuities, it does not aid laypersons who attempt to understand the rules and restrictions of estate planning. This bill would decrease some of the legal costs associated with estate planning and trust management by explaining the rule against perpetuities in plain English.

Concerns that the bill would unduly extend the rule against perpetuities and "tie up" assets by restricting alienability of property are misplaced for two reasons. First, Texas has adopted the Prudent Investor Rule, which requires trustees to diversify and continuously reevaluate trust portfolios in the furtherance of a trust's objectives. This rule would make it highly unlikely that trust assets would "sit on the books" and remain unproductive in perpetuity. Second, the proposed change from 21 years to 200 years would actually make Texas' perpetuities period relatively short compared to other states that provide for periods up to 1,000 years.

**OPPONENTS  
SAY:**

HB 990 would alter a long-established and fundamental principle of Texas law by effectively abolishing the rule against perpetuities. The current rule is intended to promote alienability of property and prevent the establishment of permanent "dynastic trusts" that would restrict productive

use and availability of assets. The reason the current rule provides an exception for charitable trusts only is to encourage charitable giving. Repealing the rule for non-charitable trusts would allow for essentially permanent trusts and would have serious repercussions for long-established tax, social, and economic policy and charitable giving in Texas.