

- SUBJECT:** Modifying application of the rule against perpetuities for trust interests
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Davis, Dutton, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith
- 0 nays
- WITNESSES:** For — Jerry Young, Sage Trust Company, LTA; Steve Dow, Texas Bankers Association; (*Registered, but did not testify*: Mark Vane, Husch Blackwell Strategies; Stephen Scurlock, Independent Bankers Association of Texas; Brian Yarbrough, JPMorgan Chase Holdings, LLC; Celeste Embrey, Texas Bankers Association; Alex Meade, Texas Regional Bank)
- Against — Stephen Saunders; (*Registered, but did not testify*: Guy Herman, Statutory Probate Judges of Texas)
- BACKGROUND:** Property Code sec. 112.036 establishes the rule against perpetuities, which requires that certain future interests, including certain trust interests, vest not later than 21 years after the death of some person who was alive when the interest was created. Under current law, the rule against perpetuities does not apply to charitable trusts.
- DIGEST:** HB 654 would modify the rule against perpetuities to require that an interest in a trust, other than a charitable trust, would have to vest, if at all, not later than 300 years after the effective date of a trust if:
- the trust's effective date was on or after September 1, 2021, or;
 - the trust's effective date was before September 1, 2021, and the trust instrument specifically provided that an interest in the trust would vest under the law governing perpetuities as applicable on the date the interest vested.

The effective date of a trust would be the date that the trust became irrevocable.

The bill would take effect September 1, 2021.

SUPPORTERS
SAY:

HB 654 would increase the state's competitiveness in estate planning and trust planning by modifying and clarifying the rule against perpetuities (RAP) to protect the corpus of a trust for a longer period of time. Currently, 23 other states have modified their RAP to offer perpetual trusts or to extend the permissible duration of a trust. The restrictive nature of the rule in Texas limits Texans' choices for trust and estate planning, resulting in the movement of trust assets to other states with more relaxed RAP statutes. The movement of these trust assets and associated trust management businesses has negative economic impacts for Texas, as the money associated with these trusts that are started in other states leaves Texas for generations.

The bill would help to ensure that Texas was competitive with other states by offering a maximum permissible duration of 300 years for a trust, which is similar to permissible durations offered by other states. The modifications proposed by the bill would not eliminate the RAP nor allow for perpetual trusts in Texas, which removes potential concerns about indefinite restriction of use and availability of important assets. It has been shown that a state's abolition of the RAP can substantially increase average reported trust assets and trust account sizes, and the modifications to the RAP presented by the bill could support similar trust asset growth in Texas. Additional fees and resources associated with trust management would contribute to significant growth in the Texas economy by producing new jobs to support additional and growing trust accounts.

The bill also would clarify the permissible duration for a Texas trust by eliminating the confusing statutory language and establishing a fixed number of years for a trust to exist. The current statutory language is outdated and difficult to understand, which can often lead to increased litigation.

Concerns that HB 654 would have a negative impact on charitable giving are misplaced. Federal estate taxes already incentivize charitable giving,

and nothing in the bill would impact these tax policies. Practitioners in the trust and estates field also see ongoing evidence that a person inclined toward charitable giving will continue to prioritize giving, regardless of the estate planning instruments available.

**CRITICS
SAY:**

HB 654 would change a long-established and fundamental principle of Texas property law by effectively abolishing the rule against perpetuities (RAP), which could have negative impacts on the Texas economy and on large-scale charitable giving.

The current RAP is intended to promote alienability of property and prevent dynastic treatment of assets that would restrict their productive use and availability. Trusts under the bill's proposed modifications to the rule could tie up billions of dollars for generations and keep them out of the normal stream of commerce, as trustees are in the business of investing for wealth preservation and conservation, as opposed to typical investment for profit.

The current RAP encourages charitable giving by excluding charitable trusts from its requirements. Modifying the rule for non-charitable trusts would allow for essentially permanent trusts, which could deplete the pool of assets available for charitable giving. Additionally, if HB 654 became law, once assets went into trusts, even if the trusts provided specifically for charitable distributions, trustees might not make those distributions for fear of being sued by their current beneficiaries and future generations of beneficiaries.

Under HB 654, disputes over proposed charitable distributions and difficulties associated with interpreting trusts drafted hundreds of years ago would generate increased litigation, which could overburden courts.