

BILL ANALYSIS

Senate Research Center
77R5412 CAS-F

S.B. 698
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Jurisprudence
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DIGEST AND PURPOSE

Currently in Texas, a property interest must vest in a person entitled to the property within a certain period of time. This practice, commonly known as the rule against perpetuities, limits the right to control the disposition of trust assets for more than one or two generations by requiring a trust to terminate in the same period of time. Under current federal law, however, it is possible to create a trust that can grow, free of estate, gift, or generation-skipping tax as long as the trust lasts. As proposed, S.B. 698 provides that the common-law rule against perpetuities as that rule relates to trusts does not apply in this state and that the rule against perpetuities does not apply to trusts. Additionally, S.B. 698 lengthens the vesting period for the rule against perpetuities from 21 years to 1,000 years.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 5.042(a), Property Code, to set forth certain specific common-law rules or doctrines that do not apply in this state.

SECTION 2. Amends Section 112.036, Property Code, as follows:

Sec. 112.036. New heading: RULE AGAINST PERPETUITIES; REMOTENESS IN VESTING. (a) Provides that this section governs the applicability of any rule against perpetuities or remoteness of vesting as that rule relates to trusts, except as provided by Section 121.004.

(b) Provides that the rule against perpetuities does not apply, rather than applies, to trusts. Deletes existing text pertaining to charitable trusts.

(c) Provides that an interest in a trust is not good unless it must vest, if at all, not later than 1,000 years, rather than 21 years, after some life in being at the time of the creation of the interest. Deletes existing text pertaining to a period of gestation and interest in a trust being reformed or construed.

SECTION 3. Amends Section 121.004, Property Code, as follows:

Sec. 121.004. New heading: CONTINUATION OF PENSION TRUSTS. Deletes existing text pertaining to the rule against perpetuities.

SECTION 4. (a) Effective date: January 1, 2002. Makes application of this Act contingent upon approval by the voters of the constitutional amendment proposed by the 77th Legislature removing the prohibition against perpetual trusts.

(b) Makes application of this Act prospective.