

BILL ANALYSIS

Senate Research Center
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H.B. 654
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Rule Against Perpetuities (RAP) is an antiquated legal principal based on English feudal law that defines a permissible duration for certain trusts. Texas's RAP statute generally requires that an interest in a trust must be finally settled (vest) no later than 21 years after some life in being at the time of the creation of the trust. The restrictive nature of Texas's RAP statute not only limits Texans' choices as they develop estate and gift plans, it also puts the state at an economic disadvantage because the estate plans of Texans are being developed in one of the numerous other states that have already extended their RAP statutes. These dollars are leaving the state for generations.

The restrictions in the current RAP law are problematic as trusts are an important mechanism for many middle class Americans interested in Medicaid planning, credit shelter planning, and splitting assets between second wives and children of first marriages. Longer-term trusts provide families more money through tax savings, superior investing through aggregation of assets, and reduced fractionalization of assets. Texans should have access to both short-term and long-term trust planning options without having to leave the state.

Updating Texas's RAP would also benefit the state economy. Today, citizens interested in utilizing long-term trusts to develop their estate plans must do so in one of the 20+ other states that have extended or eliminated their RAP. One study found that after a state abolished its RAP, the state's reported trust assets through 2003 increased by as much as 20 percent, or roughly \$6 billion, relative to those that retained the rule. The average trust account size also increased by as much as 20 percent, or roughly \$200,000, relative to states that retained the rule. By 2003, 17 states had abolished RAP and an estimated \$100 billion in trust assets had moved into these states.

H.B. 654 amends Section 112.036, Property Code, to clarify the permissible duration for a Texas trust by eliminating the confusing language currently in statute and establishing a fixed number of years (300) for a trust to exist. The effective date of a trust is the date that the trust becomes irrevocable and does not apply retroactively, unless a trust is established before the effective date of the bill.

H.B. 654 amends current law relating to the rule against perpetuities.

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 112.036, Property Code, as follows:

Sec. 112.036. RULE AGAINST PERPETUITIES. (a) Creates this subsection from existing text. Provides that the rule against perpetuities applies to an interest in a trust other than a charitable trust, rather than applies to trusts other than charitable trusts.

(b) Provides that, for purposes of this section, the effective date of a trust is the date the trust becomes irrevocable.

(c) Requires that an interest in a trust vest, if at all:

(1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021; or

(2) except as provided by Subsection (d), not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation, if the effective date of the trust is before September 1, 2021.

Makes a nonsubstantive change.

(d) Authorizes an interest in a trust that has an effective date before September 1, 2021, to vest as described by Subsection (c)(1) if the trust instrument provides that an interest in the trust vests under the provisions of this section applicable to trusts on the date that the interest vests.

(e) Creates this subsection from existing text. Authorizes an interest in a trust to be reformed or construed to the extent and as provided by Section 5.043 (Reformation of Interests Violating Rule Against Perpetuities). Makes a nonsubstantive change.

SECTION 2. Effective date: September 1, 2021.