



## 98TH GENERAL ASSEMBLY

### State of Illinois

#### 2013 and 2014

#### HB2211

by Rep. Jim Durkin

#### SYNOPSIS AS INTRODUCED:

765 ILCS 305/3.5 new

765 ILCS 305/4

765 ILCS 305/5

from Ch. 30, par. 194

from Ch. 30, par. 195

Amends the Statute Concerning Perpetuities. Provides that a qualified perpetual trust is created by specified express terms. Provides that qualified perpetual trusts are not subject to the rule against perpetuities with respect to the vesting of interests in property. Provides that a trustee of a qualified perpetual trust shall have the unrestricted power and right to sell or convey the interest in the property after the end of the period of the rule against perpetuities and the power to sell property is not limited and the power of alienation is not suspended while the trustee or other person in being can convey the property. Provides that there is no time period in which the interests in property of a qualified perpetual trust are required to vest. Provides that language in a governing instrument of a trust which is not a qualified perpetual trust that is exempt from generation-skipping transfer tax seeks to (1) disallow the vesting or termination of an interests or trust beyond, (2) postpone the vesting or termination of an interest or trust until, or (3) operate in effect in a similar fashion upon, the later of (A) the expiration of a period of time not exceeding 21 years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or (B) the expiration of a period of time that exceeds or might exceed 21 years after the death of the survivor of lives in being at the creation of the trust or other property arrangement, that language is inoperative to the extent it produces a period of time that exceeds 21 years after the death of the survivor of the specified lives.

LRB098 06366 HEP 36408 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Statute Concerning Perpetuities is amended  
5 by changing Sections 4 and 5 and adding Section 3.5 as follows:

6 (765 ILCS 305/3.5 new)

7 Sec. 3.5. Creation and characteristics of qualified  
8 perpetual trusts.

9 (a) A qualified perpetual trust, as defined in Section 3 of  
10 this Act, may, without limitation, be created by (i) specific  
11 reference in the terms governing the trust to subsection (a-5)  
12 of Section 3 of this Act; (ii) the express terms governing the  
13 trust stating that the rule against perpetuities does not  
14 apply; or (iii) the express terms governing the trust  
15 demonstrating an intent to establish a qualified perpetual  
16 trust or stating that the provisions of subsection (a-5) of  
17 Section 3 of this Act apply to the trust.

18 (b) Notwithstanding any contrary provision in an  
19 instrument governing a qualified perpetual trust, the  
20 following apply to the qualified perpetual trust:

21 (1) the rule against perpetuities with respect to the  
22 vesting of interest in property does not apply;

23 (2) a trustee's power of alienation over any interest

1 in property is not suspended for a period beyond the period  
2 of the rule against perpetuities;

3 (3) a trust provision that, but for this subparagraph  
4 (3), would (A) limit the power of the trustee (or other  
5 person to whom the power is properly granted or delegated)  
6 to sell property beyond the period of the rule against  
7 perpetuities; or (B) suspend the power of alienation over  
8 any interest in property beyond the period of the rule  
9 against perpetuities shall be invalid to the extent such  
10 limitation or suspension extends beyond the period of the  
11 rule against perpetuities. Instead, the trustee shall have  
12 the unrestricted power and right to sell or convey the  
13 interest in that property after the end of the period of  
14 the rule against perpetuities; and

15 (4) the power to sell is not limited and the power of  
16 alienation is not suspended while the trustee or any other  
17 person in being can, alone or in combination with others,  
18 convey absolute fee in possession of real property, or full  
19 ownership of personal property.

20 (765 ILCS 305/4) (from Ch. 30, par. 194)

21 Sec. 4. Application of the Rule Against Perpetuities.

22 (a) The rule against perpetuities shall not apply:

23 (1) to any disposition of property or interest therein  
24 which, at the effective date of this Act, does not violate,  
25 or is exempted by statute from the operation of, the common

1 law rule against perpetuities;

2 (2) to powers of a trustee to sell, lease or mortgage  
3 property or to powers which relate to the administration or  
4 management of trust assets, including, without limitation,  
5 discretionary powers of a trustee to determine what  
6 receipts constitute principal and what receipts constitute  
7 income and powers to appoint a successor trustee;

8 (3) to mandatory powers of a trustee to distribute  
9 income, or to discretionary powers of a trustee to  
10 distribute principal prior to termination of a trust, to a  
11 beneficiary having an interest in the principal which is  
12 irrevocably vested in quality and quantity;

13 (4) to discretionary powers of a trustee to allocate  
14 income and principal among beneficiaries, but no exercise  
15 of any such power after the expiration of the period of the  
16 rule against perpetuities is valid;

17 (5) to leases to commence in the future or upon the  
18 happening of a future event, but no such lease shall be  
19 valid unless the term thereof actually commences in  
20 possession within 40 years from the date of execution of  
21 the lease;

22 (6) to commitments (A) by a lessor to enter into a  
23 lease with a subtenant or with the holder of a leasehold  
24 mortgage or (B) by a lessee or sublessee to enter into a  
25 lease with the holder of a mortgage;

26 (7) to options in gross or to preemptive rights in the

1 nature of a right of first refusal, but no option in gross  
2 shall be valid for more than 40 years from the date of its  
3 creation; or

4 (8) to qualified perpetual trusts as defined in Section  
5 3 of this Act.

6 (b) The period of the rule against perpetuities shall not  
7 commence to run in connection with any disposition of property  
8 or interest therein, and no instrument shall be regarded as  
9 becoming effective for purposes of the rule against  
10 perpetuities, and no interest or power shall be deemed to be  
11 created for purposes of the rule against perpetuities as long  
12 as, by the terms of the instrument, the maker of the instrument  
13 has the power to revoke the instrument or to transfer or direct  
14 to be transferred to himself the entire legal and equitable  
15 ownership of the property or interest therein.

16 (c) In determining whether an interest violates the rule  
17 against perpetuities:

18 (1) it shall be presumed (A) that the interest was  
19 intended to be valid, (B) in the case of an interest  
20 conditioned upon the probate of a will, the appointment of  
21 an executor, administrator or trustee, the completion of  
22 the administration of an estate, the payment of debts, the  
23 sale or distribution of property, the determination of  
24 federal or state tax liabilities or the happening of any  
25 administrative contingency, that the contingency must  
26 occur, if at all, within the period of the rule against

1 perpetuities, and (C) where the instrument creates an  
2 interest in the "widow", "widower", or "spouse" of another  
3 person, that the maker of the instrument intended to refer  
4 to a person who was living at the date that the period of  
5 the rule against perpetuities commences to run;

6 (2) where any interest, but for this subparagraph (c)  
7 (2), would be invalid because it is made to depend upon any  
8 person attaining or failing to attain an age in excess of  
9 21 years, the age specified shall be reduced to 21 years as  
10 to every person to whom the age contingency applies;

11 (3) if, notwithstanding the provisions of  
12 subparagraphs (c) (1) and (2) of this Section, the validity  
13 of any interest depends upon the possibility of the birth  
14 or adoption of a child, (A) no person shall be deemed  
15 capable of having a child until he has attained the age of  
16 13 years, (B) any person who has attained the age of 65  
17 years shall be deemed incapable of having a child, (C)  
18 evidence shall be admissible as to the incapacity of having  
19 a child by a living person who has not attained the age of  
20 65 years, and (D) the possibility of having a child or more  
21 remote descendant by adoption shall be disregarded.

22 (c-5) There is no time period in which the interests in  
23 property of a qualified perpetual trust, as defined in Section  
24 3 of this Act, are required to vest. The exercise of a power of  
25 appointment over any part or all of a qualified perpetual trust  
26 (or any trust created therefrom), including an exercise that

1 creates one or more successor powers of appointment, does not  
2 postpone the vesting of any estate or interest in property  
3 subject to the exercise.

4 (d) Subparagraphs (a) (2), (3) and (6) and paragraph (b) of  
5 this Section shall be deemed to be declaratory of the law  
6 prevailing in this State at the effective date of this Act.

7 (Source: P.A. 90-472, eff. 8-17-97; 90-796, eff. 12-15-98.)

8 (765 ILCS 305/5) (from Ch. 30, par. 195)

9 Sec. 5. Trusts.

10 (a) Subject to the provisions of paragraphs (e) and (f) of  
11 this Section a trust containing any limitation which, but for  
12 this paragraph (a), would violate the rule against perpetuities  
13 (as modified by Section 4) shall terminate at the expiration of  
14 a period of (A) 21 years after the death of the last to die of  
15 all of the beneficiaries of the instrument who were living at  
16 the date when the period of the rule against perpetuities  
17 commenced to run or (B) 21 years after that date if no  
18 beneficiary of the instrument was then living, unless events  
19 occur which cause an earlier termination in accordance with the  
20 terms of the instrument and then the principal shall be  
21 distributed as provided by the instrument. If, in measuring a  
22 period from the creation of a trust or other property  
23 arrangement which is not a qualified perpetual trust as defined  
24 in Section 3 of this Act, language in a governing instrument of  
25 a trust which is not a qualified perpetual trust as defined in

1 Section 3 of this Act that is exempt from generation-skipping  
2 transfer tax (i) seeks to disallow the vesting or termination  
3 of any interest or trust beyond; (ii) seeks to postpone the  
4 vesting or termination of any interest or trust until; or (iii)  
5 seeks to operate in effect in any similar fashion upon, the  
6 later of (A) the expiration of a period of time not exceeding  
7 21 years after the death of the survivor of specified lives in  
8 being at the creation of the trust or other property  
9 arrangement; or (B) the expiration of a period of time that  
10 exceeds or might exceed 21 years after the death of the  
11 survivor of lives in being at the creation of the trust or  
12 other property arrangement, that language is inoperative to the  
13 extent it produces a period of time that exceeds 21 years after  
14 the death of the survivor of the specified lives.

15 (b) Subject to the provisions of paragraphs (c), (d) and  
16 (e) of this Section when a trust terminates because of the  
17 application of paragraph (a) of this Section, the trustee shall  
18 distribute the principal to those persons who would be the  
19 heirs at law of the maker of the instrument if he died at the  
20 expiration of the period specified in paragraph (a) of this  
21 Section and in the proportions then specified by statute,  
22 unless the trust was created by the exercise of a power of  
23 appointment and then the principal shall be distributed to the  
24 person who would have received it if the power had not been  
25 exercised.

26 (c) Before any distribution of principal is made pursuant



1 to paragraph (b) of this Section, the trustee shall distribute,  
2 out of principal, to each living beneficiary who, but for  
3 termination of the trust because of the application of  
4 paragraph (a) of this Section, would have been entitled to be  
5 paid income after the expiration of the period specified in  
6 paragraph (a) of this Section, an amount equal to the present  
7 value (determined as provided in paragraph (d) of this Section  
8 of the income which the beneficiary would have been entitled to  
9 be paid after the expiration of that period.

10 (d) In determining the present value of income for purposes  
11 of any distribution to a beneficiary pursuant to paragraph (c)  
12 of this Section:

13 (1) when income payments would have been subject in whole  
14 or in part to any discretionary power, it shall be assumed (A)  
15 that the income which would have been paid to an individual  
16 income beneficiary would have been the maximum amount of income  
17 which could have been paid to him in the exercise of the power,  
18 (B) if the income would or might have been payable to more than  
19 one beneficiary, that (except as hereinafter provided) each  
20 beneficiary would have received an equal share of the income,  
21 unless the instrument specifies less than an equal share as the  
22 maximum amount or proportion of income which would have been  
23 paid to any beneficiary in the exercise of the power, in which  
24 event the maximum specified shall control, and (C) if the  
25 income would or might have been payable to the descendants of  
26 the maker of the instrument or of another person, that, unless

1 the instrument provides otherwise, the descendants would have  
2 received the income per stirpes;

3 (2) (A) present value shall be computed on an actuarial  
4 basis and there shall be assumed a return of 5%, at simple  
5 interest, on the value of the principal from which the  
6 beneficiary would have been entitled to receive income, and (B)  
7 where the interest in income was to be for the life of the  
8 beneficiary or for the life of another, the computation shall  
9 be made on the expectancy set forth in the most recently  
10 published American Experience Tables of Mortality and no other  
11 evidence of duration or expectancy shall be considered;

12 (3) if the trustee cannot determine the present value of  
13 any income interest in accordance with the provisions of the  
14 instrument and the foregoing rules concerning income payments,  
15 the present value of the interest shall be deemed to be zero.

16 (e) This Section applies only when a trust would violate  
17 the rule against perpetuities as modified by Section 4 and does  
18 not apply to any trust which would have been valid apart from  
19 this Act.

20 (f) This Section does not apply when a trust violates the  
21 rule against perpetuities because the trust estate may not vest  
22 in the trustee within the period of the rule.

23 (Source: P.A. 76-1428.)