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ASSEMBLY BILL NO. 325–ASSEMBLYMEN GOLDWATER AND PARKS

MARCH 12, 2001

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning rule against perpetuities. (BDR 10-46)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to property; revising the provisions concerning the rule against perpetuities; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 111.1037 is hereby amended to read as follows:

111.1037 NRS 111.1031 does not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) A premarital or postmarital agreement;

(b) A separation or divorce settlement;

(c) A spouse's election;

(d) A similar arrangement arising out of a prospective, existing or previous marital relationship between the parties;

(e) A contract to make or not to revoke a will or trust;

(f) A contract to exercise or not to exercise a power of appointment;

(g) A transfer in satisfaction of a duty of support; or

(h) A reciprocal transfer;

2. A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

3. A power to appoint a fiduciary;

4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is

preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A nonvested property interest in ***,*** or a power of appointment with respect to ***,*** a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; ~~[or]~~

7. ***A nonvested property interest in, or a power of appointment with respect to, a trust if:***

(a) The trustee of the trust has the unlimited power to sell assets of the trust or at least one person, including, without limitation, the trustee, has the power to terminate the entire trust;

(b) The instrument creating the trust states that the rule against perpetuities or the provisions of NRS 111.1031 do not apply to the trust; and

(c) The trust:

(1) Is executed in this state;

(2) Has at least one trustee who is domiciled in this state;

(3) Is administered in this state, regardless of whether a portion or all of the assets of the trust are physically deposited for safekeeping in another state; or

(4) Has assets of which a substantial portion is located in this state; or

8. A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is expressly excluded by another statute of this state.

Sec. 2. NRS 111.1039 is hereby amended to read as follows:

111.1039 1. Except as extended by subsection 2 ~~[,]~~ ***and as otherwise provided in subsection 3,*** NRS 111.103 to 111.1037, inclusive, apply to a nonvested property interest or a power of appointment that is created on or after July 1, 1987. For purposes of this section only, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

2. With respect to a nonvested property interest or a power of appointment that was created before July 1, 1987, and that violates the rule against perpetuities as that rule existed before that date, a court ***,*** upon the petition of an interested person ***,*** may exercise its equitable power to reform the disposition in the manner that most closely approximates the transferor’s manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

3. The provisions of subsection 7 of NRS 111.1037 apply to an interest in property that is created by:

(a) A testamentary trust if the testator dies on or after December 1, 2002;

(b) An inter vivos trust if the settlor dies on or after December 1, 2002;

(c) An inter vivos trust that is executed on or after December 1, 2002; or

(d) The exercise of a general power of appointment on or after December 1, 2002.

Sec. 3. This act becomes effective on December 1, 2002, only if Assembly Joint Resolution No. 4 of the 70th session of the Nevada Legislature is approved by the voters at the general election on November 5, 2002.