

## LEGISLATIVE BILL 377

Approved by the Governor May 26, 1989

Introduced by Kristensen, 37

AN ACT relating to property; to amend sections 15-847, 16-715, 72-1268.04, 77-2306, 77-2344, and 77-2355, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2320, 77-2326.04, and 77-2352, Revised Statutes Supplement, 1988; to adopt the Uniform Statutory Rule Against Perpetuities Act; to provide for additional security to be deposited or pledged in lieu of bond by certain banks and savings and loan associations as prescribed; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 8 of this act shall be known and may be cited as the Uniform Statutory Rule Against Perpetuities Act.

Sec. 2. (a) A nonvested property interest is invalid unless:

(1) When the interest is created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then alive; or

(2) The interest either vests or terminates within ninety years after its creation.

(b) A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

(1) When the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one years after the death of an individual then alive; or

(2) The condition precedent either is satisfied or becomes impossible to satisfy within ninety years after its creation.

(c) A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

(1) When the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one years after the death of an individual then alive; or

(2) The power is irrevocably exercised or otherwise terminates within ninety years after its

creation.

(d) In determining whether a nonvested property interest or a power of appointment is valid under subdivision (a)(1), (b)(1), or (c)(1) of this section, the possibility that a child will be born to an individual after the individual's death is disregarded.

Sec. 3. (a) Except as provided in subsections (b) and (c) of this section and subsection (a) of section 6 of this act, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

(b) For purposes of the Uniform Statutory Rule Against Perpetuities Act, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of (i) a nonvested property interest or (ii) a property interest subject to a power of appointment described in subsection (a) or (b) of section 2 of this act, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

(c) For purposes of the act, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

Sec. 4. Upon the petition of an interested person, a county court in a proceeding described in section 30-2211 or 30-2806 or a district court shall reform a disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the ninety years allowed by subdivision (a)(2), (b)(2), or (c)(2) of section 2 of this act if:

(1) A nonvested property interest or a power of appointment becomes invalid under section 2 of this act;

(2) A class gift is not but might become invalid under section 2 of this act and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

(3) A nonvested property interest that is not validated by subdivision (a)(1) of section 2 of this act can vest but not within ninety years after its creation.

Sec. 5. Section 2 of this act 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 (i) a premarital or postmarital agreement, (ii) a separation or divorce settlement, (iii) a spouse's election, (iv) a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties, (v) a contract to make or not to revoke a will or trust, (vi) a contract to exercise or not to exercise a power of appointment, (vii) a transfer in satisfaction of a duty of support, or (viii) 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 property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another law of this state.

Sec. 6. (a) Except as extended by subsection (b) of this section, the Uniform Statutory Rule Against Perpetuities Act applies to a nonvested property interest or a power of appointment that is created on or after the effective date of this act. For purposes of this section, 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.

(b) If a nonvested property interest or a power of appointment was created before the effective date of this act and is determined in a judicial proceeding, commenced on or after such date, to violate this state's rule against perpetuities as that rule existed before such date, a county court in a proceeding described in section 30-2211 or 30-2806 or a district court upon the petition of an interested person may 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.

Sec. 7. The Uniform Statutory Rule Against Perpetuities Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

Sec. 8. The Uniform Statutory Rule Against Perpetuities Act supersedes the rule of common law known as the rule against perpetuities.

Sec. 9. That section 15-847, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

15-847. In lieu of the bond required by section 15-846, any bank making application to become a depository may deposit or pledge as security with the city treasurer (1) United States Government bonds, (2) bonds of the State of Nebraska; or bonds of any state whose bonds are purchased by the Board of Educational Lands and Funds of this state for investment of the permanent school fund, (3) warrants of the State of Nebraska, (4) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (5) bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, (6) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (7) warrants of the county or any city, village, or school district in the county.

The penal sum of such bond or the sum of such pledge of assets may be reduced in the amount of such deposit insured by the Federal Deposit Insurance Corporation. The depository bank depositing or pledging securities above described in this section shall have the right to substitute other approved securities as provided in this section in lieu of securities already pledged if it so desires at any time. The depository bank may at its option deposit or make the pledge of securities authorized in this section in the manner provided in section 77-2328.

Sec. 10. That section 16-715, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

16-715. In lieu of the bond required by section 16-714, any bank making application to become a depository may deposit or pledge as security with the city clerk (1) United States Government bonds, (2) United States Government guaranteed bonds or notes, (3) bonds of any state or municipal subdivision which are fully defeased as to principal and interest by any combination of bonds or notes authorized in subdivision (1), (2), or (7) of this section, (4) bonds of the State of Nebraska or of any state whose bonds are purchased by the state investment officer of this state for investment of the permanent school fund, (5) warrants of the State of Nebraska, (6) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (7) bonds or notes of United States governmental agencies, including bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, or (8) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (9) warrants of the county or any city, village, or school district in the county. The penal sum of such bond or the sum of such pledge of assets shall be ~~of the value~~ equal to or greater than the amount of the deposit in excess of that portion of such deposit insured by the Federal Deposit Insurance Corporation. The depository bank depositing or pledging securities above described in this section shall have the right to substitute other approved securities provided for in this section in lieu of securities

already pledged if it so desires at any time. The depository bank may at its option deposit or make the pledge of securities authorized in this section in the manner as provided in section 77-2328.

Sec. 11. That section 72-1268.04, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

72-1268.04. (1) In lieu of a the bond as provided in required by section 72-1268.01, any bank or building and loan association making application to become a depository under the Nebraska Capital Expansion Act may deposit with the state investment officer (a) United States Government bonds, (b) United States Government guaranteed bonds or notes, (c) bonds or notes of United States ~~Governmental~~ governmental agencies including bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, (d) bonds of any state or municipal subdivision which are fully guaranteed as to principal and interest by any combination of bonds or notes provided in subdivisions (a) ~~to~~ through (c) of this subsection, (e) bonds of the State of Nebraska or of any state whose bonds are purchased by the state investment officer of this state for investment of the permanent school fund, (f) warrants of the State of Nebraska, (g) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (h) securities issued under the authority of the Federal Farm Loan Act, ~~or~~ (i) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (j) warrants of any county, city, village, or school district in the State of Nebraska.

(2) When the deposit to be secured is in an interest-bearing account, there may be deposited with the state investment officer; in lieu of the bond as provided in section 72-1268.01, guaranty agreements of the Small Business Administration of the ~~federal~~ government United States Government.

Sec. 12. That section 77-2306, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2306. (1) In lieu of a bond as provided in section 77-2305, any bank making application to

become a depository under the provisions of sections 77-2301 to 77-2309 may deposit with the State Treasurer: (a) United States Government notes, certificates of indebtedness, or treasury bills of any issue; (b) obligations fully and unconditionally guaranteed both as to principal and interest by the United States or bonds, bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration; 7 (c) bonds of any county, city, village, or school district of this state which have been issued and registered as required by law; (d) bonds of the State of Nebraska, or of any state whose the bonds of which are purchased by the Board of Educational Lands and Funds of this state for investment of the permanent school fund, or warrants of the State of Nebraska; (e) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture; or (f) registered warrants of any county, city, or school district of this state. 7 county bonds, municipal bonds or school district bonds of any county, city, village or school district in the State of Nebraska issued under the directions of and with the approval of the Director of Administrative Services-

(2) When the deposit to be secured is in an interest-bearing account, there may be deposited with the State Treasurer, in lieu of the bond as provided in section 77-2305, guaranty agreements of the Small Business Administration of the federal government United States Government.

Sec. 13. That section 77-2320, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2320. In lieu of a bond as provided in sections 77-2316 to 77-2319, any bank making application to become a depository under sections 77-2312 to 77-2324 may: (1) Deposit with the county clerk (a) United States Government bonds, (b) United States Government guaranteed bonds or notes, (c) bonds or notes of United States governmental agencies, including bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, (d) bonds of any state or municipal subdivision which are fully defeased as to principal and interest by any combination of bonds or notes provided

in subdivisions (a) ~~to~~ through (c) of this subdivision, (e) bonds of the State of Nebraska or of any state whose bonds are purchased by the state investment officer of this state for investment of the permanent school fund, (f) warrants of the State of Nebraska, (g) county bonds, municipal bonds, or school district bonds of any county, city, village, or school district in the State of Nebraska issued under the direction of and with the approval of the Auditor of Public Accounts, (h) securities issued under the authority of the Federal Farm Loan Act, ~~or~~ (i) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, or (j) warrants of the county or any city, village, or school district in the county; or (2) pledge or grant a security interest in assets of the bank as provided in section 77-2318.01.

Sec. 14. That section 77-2326.04, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2326.04. (1) No deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made to accumulate in any bank designated as a depository bank unless and until the county judge, clerk of the county court, or clerk of the district court, as the case may be, has ~~required of~~ and received from such bank as security for the prompt repayment by the bank of his or her respective deposits in excess of the amount insured by the Federal Deposit Insurance Corporation either a surety bond in form and with corporate sureties approved by formal resolution of the county board or in lieu thereof a pledge of or grant of a security interest in:

(a) Bonds, notes, certificates of indebtedness, or treasury bills of the United States Government of any issue;

(b) Obligations fully and unconditionally guaranteed both as to principal and interest by the United States or bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration;

(c) Bonds of any county, city, village, or school district of this state which have been issued and registered as required by law; ~~or~~

(d) Loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of



Agriculture; or

(e) Registered warrants of any county, city, or school district of this state.

(2) The delivery by the bank designated as a depository bank to the county judge, clerk of the county court, or clerk of the district court, as the case may be, of a written receipt or acknowledgment from a Federal Reserve Bank or branch thereof or some other bank or trust company in this state, other than the bank granting the security interest, that includes the name and title of such public officer, describes securities identified on the books or records of the depository bank, and provides that the securities or the proceeds of securities will be delivered only upon surrender of the receipt or the acknowledgment duly executed by the public officer designated thereon and by the authorized representative of the depository bank shall, together with such public officer's actual and continued possession of such receipt or acknowledgment, constitute a valid and perfected security interest in favor of such public officer in and to the securities so identified. Article 9, Uniform Commercial Code, shall not apply to any security interest arising under this section.

Sec. 15. That section 77-2344, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2344. No deposit in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made in any bank designated as a depository unless and until the treasurer or ex officio treasurer shall have has received from said the bank as security for the prompt repayment by the bank, either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district, or the deposit and pledge of (1) the securities of the United States of America, (2) the bonds of any state of the United States of America, (3) registered bonds of Nebraska school districts, (4) registered bonds of Nebraska counties, (5) bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration, (6) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture. (7) bonds of Nebraska municipalities, or ~~(7)~~ (8) bonds of the particular metropolitan water or metropolitan utilities district.

Sec. 16. That section 77-2352, Revised Statutes Supplement, 1988, be amended to read as follows:

77-2352. No deposit in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made in any bank designated as a depository unless and until the treasurer or ex officio treasurer has received from the bank as security for the prompt repayment by the bank either a corporate surety bond in form and with sureties approved by formal resolution by the governing body of such district or the deposit and pledge of (1) a pledge of bonds, notes, certificates of indebtedness, and treasury bills of the United States Government of any issue, (2) obligations fully and unconditionally guaranteed both as to principal and interest by the United States, (3) bonds of any county, city, village, or school district of this state which have been issued and registered as required by law, or (4) registered warrants of the county or of any city, village, or school district in the county where such school district or township is located, or (5) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture. Bonds and securities so pledged shall be delivered to and held by some federal reserve bank or branch thereof or some other responsible bank or trust company within this state other than the pledgor with an appropriate joint custody and pledge agreement. ~~The~~ ~~;~~ ~~but~~ the depository bank pledging such bonds or securities shall have the right to substitute, from time to time, other and different bonds or securities of equal amount, within the foregoing requirements, and to withdraw all or any part of such pledged bonds or securities upon repaying to such treasurer and reducing his or her deposit account by the amount of the bonds or securities so withdrawn. The amount of security so pledged shall be at all times at least equal to the amount of the deposit so secured, less any portion of such deposit that is insured by the Federal Deposit Insurance Corporation.

Sec. 17. That section 77-2355, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

77-2355. No deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be made or be allowed to accumulate in any bank designated as a depository bank unless and until the treasurer or other competent officer of the district ~~shall have required of and has~~ received from such bank,

as security for the prompt repayment of such deposits by the bank; either a surety bond in form and with corporate sureties approved by formal resolution of the board of directors of such district; or, in lieu thereof (1) a pledge of bonds, notes, certificates of indebtedness, and treasury bills of the United States Government of any issue or bonds and debentures issued either singly or collectively by any of the twelve federal land banks, the twelve intermediate credit banks, or the thirteen banks for cooperatives under the supervision of the Farm Credit Administration; (2) obligations fully and unconditionally guaranteed both as to principal and interest by the United States; (3) bonds of any county, city, village, or school district of this state which have been issued and registered as required by law; (4) loan participations which carry the guarantee of the Commodity Credit Corporation, an instrumentality of the United States Department of Agriculture, (5) registered warrants of any county, city, or school district of this state; or ~~(5)~~ (6) bonds of the district making such deposits.

Sec. 18. That original sections 15-847, 16-715, 72-1268.04, 77-2306, 77-2344, and 77-2355, Reissue Revised Statutes of Nebraska, 1943, and sections 77-2320, 77-2326.04, and 77-2352, Revised Statutes Supplement, 1988, are repealed.