

SENATE BILL NO. 2248

Introduced by

Senators Lee, Watne

Representatives Carlson, Rennerfeldt

1 A BILL for an Act to amend and reenact section 47-02-27.1 of the North Dakota Century Code,
2 relating to contingent property interests in personal property.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 47-02-27.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **47-02-27.1. ~~Statutory rule against perpetuities~~— Invalidity of certain contingent**
7 **~~property~~ interests in real property, general powers of appointment, special powers of**
8 **appointment, and general testamentary powers of appointment.**

- 9 1. A contingent ~~property~~ interest in real property is invalid unless:
- 10 a. When the interest is created, it is certain to vest or terminate no later than
- 11 twenty-one years after the death of an individual then alive; or
- 12 b. The interest either vests or terminates within ninety years after its creation.
- 13 2. A general power of appointment not presently exercisable because of a condition
- 14 precedent is invalid unless:
- 15 a. When the power is created, the condition precedent is certain to be satisfied
- 16 or to become impossible to satisfy no later than twenty-one years after the
- 17 death of an individual then alive; or
- 18 b. The condition precedent either is satisfied or becomes impossible to satisfy
- 19 within ninety years after its creation.
- 20 3. A special power of appointment or a general testamentary power of appointment is
- 21 invalid unless:
- 22 a. When the power is created, it is certain to be irrevocably exercised or
- 23 otherwise to terminate no later than twenty-one years after the death of an
- 24 individual then alive; or

b. The power is irrevocably exercised or otherwise terminates within ninety years after its creation.

4. In determining whether a contingent ~~property~~ interest in real property or a power of appointment is valid under subdivision a of subsection 1, subdivision a of subsection 2, or subdivision a of subsection 3, the possibility that a child will be born to an individual after the individual's death is disregarded.

5. If, in measuring a period from the creation of a trust over real property or other similar property arrangement for holding real property, language in a governing instrument seeks to disallow the vesting or termination of any interest in real property or trust beyond, seeks to postpone the vesting or termination of any interest in real property or real property which is held in trust until, or seeks to operate in effect in any similar fashion upon, the later of the expiration of a period of time not exceeding twenty-one years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or the expiration of a period of time that exceeds or might exceed twenty-one 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 twenty-one years after the death of the survivor of the specified lives. A trust that holds only personal property and under which the trustee has an express or implied power to sell trust assets or an unlimited power to terminate in one or more persons in being is not subject to this section or any other statutory or common law rule against perpetuities or suspension of the power of alienation. The common law rule against perpetuities is not in force in this state.