

BILL ANALYSIS

Senate Research Center
78R4448 KCR-D

S.B. 534
By: Carona
Jurisprudence
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DIGEST AND PURPOSE

Currently, a property interest must vest in a person entitled to the property within a certain period of time. The rule against perpetuities (RAP) limits the right to control the disposition of trust assets for more than one or two generations by requiring that a trust must terminate within that same period of time, approximately 90 years. Under federal tax law, however, a trust can be created that can grow, free of estate, gift, or generation-skipping tax (GST), as long as the trust lasts. There are limits on how much can be placed into such a trust; taxes may be owed upon creation of a trust; and a trust must terminate after approximately 90 years, and the assets in a trust are taxed again due to estate and GST taxes. As proposed, S.B. 534 amends the Property Code, as the rule relates to trusts, to provide that the common law RAP does not apply; amends the Property Code to provide that the RAP does not apply to trusts; and lengthens the vesting period for the RAP from 21 years to 1,000 years.

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 5.042(a), Property Code, to provide that certain common-law rules or doctrines do not apply in Texas.

SECTION 2. Amends Section 112.036, Property Code, as follows:

Sec. 112.036. New heading: **RULE AGAINST PERPETUITIES; REMOTENESS IN VESTING.** (a) Provides that, except as provided by Section 121.004, this section governs the applicability of any rule against perpetuities or remoteness of vesting as that rule relates to trusts.

(b) Provides that the rule against perpetuities does not apply to trusts, rather than applying to trusts other than charitable trusts.

(c) Provides that an interest in a trust is not good unless it must vest, if at all, not later than 1,000, rather than 21, years after some life in being at the time of the creation of the interest.

SECTION 3. Amends Section 121.004, Property Code, as follows:

Sec. 121.004. New heading: **CONTINUATION OF PENSION TRUSTS.** Authorizes a pension trust to continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under any law restricting or limiting the duration of a trust. Deletes "rule against perpetuities" language.

SECTION 4. (a) Effective date: January 1, 2004, if the requisite constitutional amendment is

approved by the voters.

(b) Makes application of this Act prospective.