

House Bill 663

By: Representatives Golick of the 30<sup>th</sup>, Stokes of the 92<sup>nd</sup>, Hammontree of the 4<sup>th</sup> and Ragas of the 64<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 9 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated, the  
2 “Uniform Statutory Rule Against Perpetuities,” so as to provide for optional exceptions to  
3 the rule against perpetuities for certain trusts; to provide for a definition; to amend Chapter  
4 12 of Title 53 of the Official Code of Georgia Annotated, the “Georgia Trust Act,” so as to  
5 revise a definition and a provision relating to the creation of beneficial interests in property  
6 by deed in conformity with such exceptions; to provide for an effective date; to repeal  
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Article 9 of Chapter 6 of Title 44 of the Official Code of Georgia Annotated, the “Uniform  
11 Statutory Rule Against Perpetuities,” is amended by striking in its entirety Code Section  
12 44-6-204, relating to exceptions of the rule against perpetuities, and inserting in lieu thereof  
13 the following:

14 "44-6-204.

15 Code Section 44-6-201 shall not apply to:

- 16 (1) A nonvested property interest or a power of appointment arising out of a nondonative  
17 transfer, except a nonvested property interest or a power of appointment arising out of:
- 18 (A) A premarital or postmarital agreement;
  - 19 (B) A separation or divorce settlement;
  - 20 (C) A spouse’s election;
  - 21 (D) A similar arrangement arising out of a prospective, existing, or previous marital  
22 relationship between the parties;
  - 23 (E) A contract to make or not to revoke a will or trust;
  - 24 (F) A contract to exercise or not to exercise a power of appointment;
  - 25 (G) A transfer in satisfaction of a duty of support; or

1 (H) A reciprocal transfer;

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

5 (3) A power to appoint a fiduciary;

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

8 Nothing contained in paragraphs (2) and (3) of this Code section and this paragraph shall  
9 be construed to permit the fiduciary to continue the administration or management of  
10 assets once the nonvested property interest becomes invalid as described in subsection (a)  
11 of Code Section 44-6-201;

12 (5) A nonvested property interest held by a charity, government, or governmental agency  
13 or subdivision, if the nonvested property interest is preceded by an interest held by  
14 another charity, government, or governmental agency or subdivision;

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

23 (7) A property interest, power of appointment, or arrangement that was not subject to the  
24 common-law rule against perpetuities or is excluded by another statute of this state: or

25 (8)(A) Any real or personal property held in trust subject to the laws of this state if:

26 (i) The instrument creating the trust specifically states that the rule against  
27 perpetuities or the provisions of Code Section 44-6-201 shall not apply to the trust;

28 and

29 (ii) Either the trustee of the trust has unlimited power to sell all trust assets or if one  
30 or more persons, one of whom may be the trustee, has the unlimited power to  
31 terminate the entire trust.

32 (B) This paragraph shall be effective with respect to the following:

33 (i) An interest in real or personal property in trust created by will of a decedent dying  
34 on or after the effective date of this paragraph;

35 (ii) An interest in real or personal property created by an inter vivos or testamentary  
36 trust instrument executed on or after the effective date of this paragraph; and

1 (iii) An interest in real or personal property in trust created by the exercise of a  
 2 general power of appointment on or after the effective date of this paragraph.

3 (C) This paragraph shall not apply to the exercise of a power of appointment other than  
 4 a general power of appointment. For purposes of this paragraph, 'general power of  
 5 appointment' means a power that is exercisable in favor of the individual possessing the  
 6 power, the individual's estate, the individual's creditors, or the creditors of the  
 7 individual's estate."

## 8 SECTION 2.

9 Chapter 12 of Title 53 of the Official Code of Georgia Annotated, the "Georgia Trust Act,"  
 10 is amended in Code Section 53-12-2, relating to definitions relative to trusts, by striking  
 11 paragraph (1) in its entirety and inserting in lieu thereof the following:

12 "(1) 'Beneficiary' means a person for whose benefit property is held in trust, regardless  
 13 of the nature of the interest. ~~A beneficiary~~ Except as otherwise provided in Code Section  
 14 44-6-204, a beneficiary must be definitely ascertainable at the time of the creation of the  
 15 trust or definitely ascertainable within the period of the rule against perpetuities."

## 16 SECTION 3.

17 Said chapter is further amended by striking in its entirety Code Section 53-12-51, relating  
 18 to creation of beneficial interests in property by deed, and inserting in lieu thereof the  
 19 following:

20 "53-12-51.

21 The owners of property located in this state or persons desiring to acquire beneficial  
 22 ownership of such property may create by deed an estate therein and in the improvements  
 23 made thereon and in the property to be acquired, for the benefit of themselves and such  
 24 other persons, whether sui juris or not, who may contribute to the improvement or  
 25 development or acquisition of the property and their assigns or transferees, provided that  
 26 the deed creating the estate shall provide for the improvement or development of the  
 27 property covered thereby or for the acquisition of the property and the trustee or trustees  
 28 therein named and their successors shall have some active duty to perform in and about the  
 29 trust property or the management or control of the same. The deed creating the estate shall  
 30 be recorded as provided in Code Section 53-12-52. When such an estate is created, the  
 31 legal title to the property and all the property added thereto or substituted therefor shall vest  
 32 and remain in the trustee or trustees named and his or her or their successors, in accordance  
 33 with the terms of the deed, with all the powers conferred thereby upon the trustee, and shall  
 34 not during the continuance of the estate pass to or vest in the beneficiaries. At the end of  
 35 25 years from the date of the deed creating the estate, the title to such of the property as

1 may then belong to the estate shall vest in the beneficiaries; and, if the deed creating the  
2 estate so provides, a renewal of the estate may be made at the end of the 25 years, upon the  
3 terms and conditions and in the manner therein set forth, for a like period; ~~provided,~~  
4 ~~however, that in the alternative.~~ However, as alternatives to the period of 25 years and the  
5 renewal thereof, if the deed so provides, the estate may be created for any period of time  
6 specified therein which does not extend beyond any number of lives in being and 21 years  
7 thereafter; or the trust may be an exception to the rule against perpetuities in accordance  
8 with Code Section 44-6-204."

9 **SECTION 4.**

10 This Act shall become effective on July 1, 2001.