

FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009

SB 497/a

March 4, 2009

Madam President:

Your **JUDICIARY COMMITTEE**, to whom has been referred

SENATE BILL 497

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 6, line 11, strike "or of a" and insert in lieu thereof ", an incapacitated person or a minor".

2. On page 10, line 3, after "decedent" insert ", a minor protected person".

3. On page 10, line 4, strike "a protected" and insert in lieu thereof "an incapacitated".

4. On page 15, line 15, after the semicolon insert "and".

5. On page 15, strike lines 16 and 17 in their entirety and renumber the succeeding paragraph accordingly.

6. On page 20, line 2, strike "ward" and insert in lieu thereof "protected person" and strike "ward's" and insert in lieu thereof "protected person's".

7. On page 61, between lines 2 and 3, insert the following new section:

"Section 20. Section 45-2-901 NMSA 1978 (being Laws 1992, Chapter 66, Section 1) is amended to read:

"45-2-901. STATUTORY RULE AGAINST PERPETUITIES.--

A. A nonvested property interest is invalid unless:

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(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 to 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 each Paragraph (1) of Subsections A, B and C of this section, the possibility that a child will be born to an individual after the individual's death shall be disregarded.

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~~[E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to postpone the vesting or termination of any interest or trust until, seeks to disallow the vesting or termination of any interest or trust beyond, seeks to require all interests or trusts to vest or terminate no later than, or seeks to operate in effect in any similar fashion upon the later of:~~

~~(1) 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~~

~~(2) 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, then the portion of the language described in Paragraph (2) above is inoperative if and to the extent it produces a period of time that exceeds twenty-one years after the death of the survivor of the lives specified in Paragraph (1) above.]~~

E. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument (i) seeks to disallow the vesting or termination of any interest or trust beyond, (ii) seeks to postpone the vesting or termination of any interest or trust until or (iii) seeks to operate in effect in any similar fashion upon, the later of (1) 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 (2) 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."

8. Renumber the succeeding sections accordingly.

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9. On page 84, line 14, strike the first occurrence of "of" and insert in lieu thereof "or".

10. On page 86, line 5, strike "ward" and insert in lieu thereof "protected person".

11. On page 86, line 8, strike "ward" and insert in lieu thereof "protected person".

12. On page 87, line 4, strike "ward" and insert in lieu thereof "protected person".

13. On page 87, line 7, after "terminated" insert "or relinquished".

14. On page 87, line 11, after "a" insert "guardian or".

15. On page 87, line 16, after the semicolon insert "and".

16. On page 87, strike lines 17 and 18 in their entirety and renumber the succeeding paragraph accordingly.

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Respectfully submitted,

Cisco McSorley, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against
Yes: 9
No: 0
Excused: Sanchez, B., Wirth
Absent: None

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