

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

2ND CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2135

By: Peters, Piatt, Carey and  
Adkins of the House

and

Coffee of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to trusts; creating the Family Wealth Preservation Trust Act; defining terms; making corpus and income of preservation trust exempt from attachment; allowing for preservation trust to be revocable or irrevocable; prohibiting act from increasing value of homestead exemption; prohibiting judicial body from forcing revocation of preservation trust; making certain transfers subject to the Uniform Fraudulent Transfer Act; providing for certain presumption; prohibiting establishment of multiple preservation trusts; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 10 of Title 31, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Family Wealth Preservation Trust Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11 of Title 31, unless there is created a duplication in numbering, reads as follows:

As used in the Family Wealth Preservation Trust Act:

1. "Grantor" means an individual establishing or creating a preservation trust;
2. "Oklahoma assets" means:

- a. a stock, bond, or debenture issued by an Oklahoma-based company,
- b. a bond or other obligation issued by the State of Oklahoma or an Oklahoma governmental agency,
- c. a bond or other obligation issued by a county of this state or by a municipal government located in this state,
- d. an account in an Oklahoma-based bank. As used in this subparagraph, "account" means a demand, time, savings or passbook type of account or a certificate of deposit type of account, and
- e. real property located in the State of Oklahoma;

3. "Oklahoma-based bank" or "Oklahoma-based trust company" means a bank or a trust company chartered under the laws of this state or nationally chartered and having a place of business in Oklahoma, which place of business shall be a physical location;

4. "Oklahoma-based company" means a corporation, limited liability company, limited partnership, or limited liability partnership formed or domesticated in Oklahoma and having its principal place of business in Oklahoma, which principal place of business shall be a physical location;

5. "Preservation trust" means a trust:

- a. established by a grantor under Oklahoma law,
- b. having at all times as the trustee an Oklahoma-based bank that maintains a trust department or an Oklahoma-based trust company,
- c. naming as beneficiaries only qualified beneficiaries or a qualified beneficiary,
- d. having as its corpus solely Oklahoma assets, and
- e. reciting in its terms that the income generated from the corpus of the trust is subject to taxation under the income tax laws of the State of Oklahoma; and

6. "Qualified beneficiary" or "qualified beneficiaries" means:
- a. the natural children, adopted children if they were under the age of eighteen (18) at the time of the creation of the preservation trust, grandchildren, or issue of deceased natural children or grandchildren of the grantor,
  - b. the spouse of the grantor, or
  - c. a nonprofit organization qualified under the provisions of the Internal Revenue Code of 1986, 26 U.S.C., Section 501(c)(3).

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12 of Title 31, unless there is created a duplication in numbering, reads as follows:

Notwithstanding Section 3 of Title 31 of the Oklahoma Statutes, the corpus and income of a preservation trust shall be exempt from attachment or execution and every other species of forced sale and no judgment, decree, or execution can be a lien on the trust for the payment of debts of a grantor up to One Million Dollars (\$1,000,000.00) in value. Any incremental growth derived from income retained by the trustee of a preservation trust above the one-million-dollar limitation shall also be considered protected by this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13 of Title 31, unless there is created a duplication in numbering, reads as follows:

A preservation trust may be established as a revocable or irrevocable trust. If the grantor of a preservation trust revokes the preservation trust the exemption provisions of Section 3 of this act shall not be applicable on the date the grantor revokes the preservation trust.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14 of Title 31, unless there is created a duplication in numbering, reads as follows:

The exemptions provided for pursuant to other provisions of the laws of this state shall be independent and in addition to the exemption provided for pursuant to Section 3 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 15 of Title 31, unless there is created a duplication in numbering, reads as follows:

The provisions of the Family Wealth Preservation Trust Act shall not operate to increase the area and value of the homestead exemption provided for pursuant to Section 2 of Title 31 of the Oklahoma Statutes.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 16 of Title 31, unless there is created a duplication in numbering, reads as follows:

No court or other judicial body shall have the authority to compel a person holding a power of revocation over a preservation trust to exercise the revocation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 17 of Title 31, unless there is created a duplication in numbering, reads as follows:

A. Any transfer of monies or property by a grantor to a preservation trust shall be subject to the provisions of the Uniform Fraudulent Transfer Act.

B. A transfer of monies or property into a preservation trust by a grantor within three (3) years of the grantor filing for protection under the United States Bankruptcy Code, 11 U.S.C., Section 101 et seq. shall be presumed to be a fraudulent conveyance. This presumption shall not be applicable in the event of an involuntary bankruptcy proceeding being commenced against the grantor.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 18 of Title 31, unless there is created a duplication in numbering, reads as follows:

A grantor may not establish more than one preservation trust. However, in the event a preservation trust established by a grantor is revoked or terminated, the grantor may establish a new presentation trust.

SECTION 10. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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