

EHB 2135

THE STATE SENATE
Thursday, April 1, 2004

ENGROSSED

House Bill No. 2135

As Amended

ENGROSSED HOUSE BILL NO. 2135 - By: PETERS, PIATT, CAREY and ADKINS
of the House and COFFEE of the Senate.

[trusts - Family Wealth Preservation Trust Act - Uniform
Fraudulent Transfer Act - presumption - codification -
effective date]

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,

- 1 b. a bond or other obligation issued by the State of
2 Oklahoma or an Oklahoma governmental agency,
3 c. a bond or other obligation issued by a county of this
4 state or by a municipal government located in this
5 state,
6 d. an account in an Oklahoma-based bank or an Oklahoma-
7 based trust company, and
8 e. real property located in the State of Oklahoma;

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

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

18 5. "Preservation trust" means a trust:

- 19 a. established by a grantor under Oklahoma law,
20 b. having at all times as the trustee an Oklahoma
21 resident or an Oklahoma-based bank that maintains a
22 trust department or an Oklahoma-based trust company,

- 1 c. naming as beneficiaries only qualified beneficiaries
- 2 or a qualified beneficiary,
- 3 d. having as its corpus solely Oklahoma assets, and
- 4 e. reciting in its terms that the income generated from
- 5 the corpus of the trust is subject to taxation under
- 6 the income tax laws of the State of Oklahoma; and

7 6. "Qualified beneficiary" or "qualified beneficiaries" means:

- 8 a. the natural children, **adopted children if they were**
- 9 **under the age of eighteen (18) at the time of the**
- 10 **creation of the Preservation Trust**, grandchildren, or
- 11 issue of deceased natural children or grandchildren of
- 12 the grantor,
- 13 b. the spouse of the grantor, or
- 14 c. a nonprofit organization qualified under the
- 15 provisions of the Internal Revenue Code of 1986, 26
- 16 U.S.C., Section 501(c)(3).

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

20 Notwithstanding **Section 3 of Title 31 of the Oklahoma Statutes**,
21 the corpus and income of a preservation trust shall be exempt from
22 attachment or execution and every other species of forced sale and
23 no judgment, decree, or execution can be a lien on the trust for the

1 payment of debts of a grantor up to One Million Dollars
2 (\$1,000,000.00) in value. Any incremental growth derived from
3 income retained by the trustee of a preservation trust above the
4 one-million-dollar limitation shall also be considered protected by
5 this section.

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

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

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

17 The exemptions provided for under other provisions of the laws
18 of this state shall be mutually exclusive of the exemption provided
19 for under Section 3 of this act.

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

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

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

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

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

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

17 B. A transfer of monies or property into a preservation trust
18 by a grantor within one (1) year of the grantor filing for
19 protection under the United States Bankruptcy Code, 11 U.S.C.,
20 Section 101 et seq. shall be presumed to be a fraudulent conveyance.
21 This presumption shall not be applicable in the event of an
22 involuntary bankruptcy proceeding being commenced against the
23 grantor.

1 SECTION 9. This act shall become effective November 1, 2004.
2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-30-04 - DO
3 PASS, As Amended.