

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2135:

Peters

AS INTRODUCED

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; providing for codification; and providing an 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,
- 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 or an Oklahoma-based trust company, 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 its principal place of business in Oklahoma, which principal 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, 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 any other provision of law, 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 under other provisions of the laws of this state shall be mutually exclusive of the exemption provided for under 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 under 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. This act shall become effective November 1, 2004.

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