

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1998

By: Denney

AS INTRODUCED

An Act relating to trusts; amending Sections 2, 3, 7 and 8, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Sections 11, 12, 16 and 17), which relate to the Family Wealth Preservation Trust Act; modifying definitions; allowing for exemption of incremental growth of corpus of trust; providing for computation of fair market value of certain assets; providing for computation of asset encumbered by debt; protecting rights of creditor of certain assets in trust; providing limitations on exemption of assets of trust; providing for preemption; allowing for application of certain rules if proceeding converted to voluntary bankruptcy; repealing Section 6, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 15), which relates to the Family Wealth Prevention Act; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 11), is amended to read as follows:

Section 11. 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~~ any equity interest in an Oklahoma-based company or any debenture or other debt obligation 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, by a school district located in this state, or by any public trust for the benefit of either this state or one or more political subdivisions of this state,

- d. ~~an~~ a deposit account in an Oklahoma-based bank. As used in this subparagraph, "deposit 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, or an interest in real property located in the State of Oklahoma, including without limitation, a mineral interest in, or a promissory note secured primarily by a mortgage of, real property located in the State of Oklahoma, and
- f. an interest in a mutual fund, investment fund or common trust fund, if such fund is invested solely in any of the Oklahoma assets listed in subparagraph a, b, c, d or e of this paragraph;

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,~~ that both:

- a. has its principal place of business in Oklahoma, which principal place of business shall be a physical location, and
- b. has a majority of its total assets, by fair market value, invested in:
 - i. Oklahoma assets,

ii. tangible personal property located in Oklahoma,
and,

iii. contract rights arising from the financing,
leasing, or selling of tangible personal property
located in Oklahoma;

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,~~ or grandchildren, or issue of deceased ~~natural~~ children or grandchildren of the grantor either by blood or adoption,
- 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 2. AMENDATORY Section 3, Chapter 509, O.S.L.

2004 (31 O.S. Supp. 2004, Section 12), is amended to read as follows:

Section 12. A. Notwithstanding Section 3 of ~~Title 31 of the Oklahoma Statutes~~ this title, 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 of assets contributed to the preservation trust. Any exchange of the exempt assets of the preservation trust for other Oklahoma assets, or incremental growth derived from sale or appreciation in value of the exempt assets of the preservation trust, or any other income retained by the trustee of a preservation trust with respect to the exempt assets, resulting in value of trust assets above the one-million-dollar limitation stated in this subsection shall ~~also~~ be considered ~~protected by this section~~ equally exempt.

B. Fair market value of a noncash asset as of the date when it is contributed to a preservation trust may be established by the trustee based on reliable market quotation, if available, or competent third-party appraisal. A market quotation or appraisal as of a date shortly before or after the date of the asset's contribution to the preservation trust shall be adequate to establish value if the trustee:

1. Cannot obtain a more current market quotation; or
2. Reasonably believes that the available appraisal would not have changed significantly if prepared or updated as of the asset-contribution date.

C. If a grantor contributes an asset encumbered by a debt, and the trustee of the preservation trust assumes or otherwise repays the debt, the value of the asset at the time of contribution to the trust shall be reduced by the principal amount of debt that the trustee assumes or otherwise repays. If a grantor contributes an asset that is encumbered by debt but the grantor pays the debt, the value of the asset at the time of contribution shall not be reduced by any principal amount of the debt that the grantor pays.

D. If any asset is subject to a mortgage or security interest when transferred to a preservation trust, the transfer shall not

affect the rights and remedies of the mortgagee or other secured party regarding that asset, as to obligations existing at the date of the transfer and secured by the asset. If an asset is transferred to a preservation trust at a time when purchase money remains owing thereon, the taxes thereon are due and unpaid, or money is owing for work and material used in constructing improvements thereon, the rights and remedies of lien creditors related to such liens arising before the transfer shall continue to apply to the asset after the transfer.

E. Subsection A of this section, applying only to the debts of a grantor, shall not operate to exempt the corpus and income of a preservation trust from the remedies of a creditor to the extent that the trustee of the preservation trust specifically assumes liability for the obligations of the grantor. Subsection A of this section does not shield the corpus and income of a preservation trust from the rights of a creditor with regard to obligations that the trustee incurs directly on behalf of the trust. Subject to limitations on the powers of a trustee that may be stated in a trust agreement, the trustee of a preservation trust may incur debt and pledge assets of the trust, giving rise to normal remedies of a creditor with respect to such debt and assets.

SECTION 3. AMENDATORY Section 7, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 16), is amended to read as follows:

Section 16. ~~No~~ Except in cases where state law is preempted, 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 4. AMENDATORY Section 8, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 17), is amended to read as follows:

Section 17. 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, if the case is not subsequently converted to a voluntary bankruptcy.

SECTION 5. REPEALER Section 6, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 15), is hereby repealed.

SECTION 6. This act shall become effective July 1, 2005.

SECTION 7. 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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