

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

HOUSE BILL 3071

By: Piatt

AS INTRODUCED

An Act relating to property; amending 60 O.S. 2001, Section 31, which relates to suspension of alienation; modifying allowable period of alienation; creating the Oklahoma Uniform Statutory Rule Against Perpetuities; providing short title; stating rule; providing for time of creation of nonvested property interest or power of appointment; providing for reformation; providing exclusions from statutory rule against perpetuities; repealing 60 O.S. 2001, Section 175.47, as amended by Section 6, Chapter 217, O.S.L. 2003 (60 O.S. Supp. 2005, Section 175.47), which relates to suspension of absolute power of alienation; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 60 O.S. 2001, Section 31, is amended to read as follows:

Section 31. The absolute power of alienation shall not be suspended, by any limitation or condition whatever, for a longer period than ~~during the continuance of the lives of persons in being at the creation of the limitation or condition plus twenty-one (21) years~~ is provided in Section 2 of this act, except as provided in Section 34 of ~~Title 60 of the Oklahoma Statutes~~ this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.47a of Title 60, unless there is created a duplication in numbering, reads as follows:

A. SHORT TITLE. This section shall be known and may be cited as the "Oklahoma Uniform Statutory Rule Against Perpetuities".

B. STATEMENT OF THE RULE.

1. A nonvested property interest in real and personal property is valid unless:

- a. when the interest is created, it is certain to vest or terminate no later than twenty-one (21) years after the death of an individual then alive, or
- b. the interest either vests or terminates within ninety (90) years after its creation for trusts created before December 1, 2006, and within one thousand (1,000) years for trusts created on or after December 1, 2006.

2. A general power of appointment not presently exercisable because of a condition precedent is invalid unless:

- a. when the power is created, the condition precedent is certain to be satisfied or become impossible to satisfy no later than twenty-one (21) years after the death of an individual then alive, or
- b. the condition precedent either is satisfied or becomes impossible to satisfy within ninety (90) years after its creation for trusts created before December 1, 2006, and within one thousand (1,000) years for trusts created on or after December 1, 2006.

3. A nongeneral power of appointment or a general testamentary power of appointment is invalid unless:

- a. when the power is created, it is certain to be irrevocably exercised or otherwise to terminate no later than twenty-one (21) years after the death of an individual then alive, or
- b. the power is irrevocably exercised or otherwise terminates within ninety (90) years after its creation for trusts created before December 1, 2006, and within one thousand (1,000) years for trusts created on or after December 1, 2006.

4. In determining whether a nonvested property interest or a power of appointment is valid under subparagraph a of paragraph 1 of this subsection, subparagraph a of paragraph 2 of this subsection or subparagraph a of paragraph 3 of this subsection, the possibility that a child will be born to an individual after the death of the individual is disregarded.

5. If, in measuring a period from the creation of a trust or other property arrangement, language in a governing instrument seeks to disallow the vesting or termination of any interest or trust beyond, seeks to postpone the vesting or termination of any interest or trust until, or seeks to operate in effect in any similar fashion upon, the later of:

- a. the expiration of a period of time not exceeding twenty-one (21) years after the death of a specified life or the survivor of specified lives, or upon the death of a specified life or the death of the survivor of specified lives in being at the creation of the trust or other property arrangement, or
- b. the expiration of a period of time that exceeds or might exceed twenty-one (21) 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 (21) years after the death of the survivor of the specified lives.

C. WHEN NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT CREATED.

1. Except as provided in paragraphs 2, 3 and 4 of this subsection and in paragraph 1 of subsection F of this section, the time of creation of a nonvested property interest or a power of appointment is determined under general principles of property law.

2. For purposes of this section, if there is a person who alone can exercise a power created by a governing instrument to become the unqualified beneficial owner of a nonvested property interest or a property interest subject to a power of appointment described in paragraph 2 or 3 of subsection B of this section, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates.

3. For purposes of this section, a nonvested property interest or a power of appointment arising from a transfer of property to a previously funded trust or other existing property arrangement is created when the nonvested property interest or power of appointment in the original contribution was created.

4. For purposes of this section, if a nongeneral or testamentary power of appointment is exercised to create another nongeneral or testamentary power of appointment, every nonvested property interest or power of appointment created through the exercise of such other nongeneral or testamentary power is considered to have been created at the time of the creation of the first nongeneral or testamentary power of appointment.

D. REFORMATION. Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the manifested plan of distribution of the transferor and is within the time allowed by subparagraph b of paragraph 1 of subsection B of this section, subparagraph b of paragraph 2 of subsection B of this section, or subparagraph b of paragraph 3 of subsection B of this section, if:

1. A nonvested property interest or a power of appointment becomes invalid under subsection B of this section;

2. A class gift is not, but might become, invalid under subsection B of this section and the time has arrived when the share of any class member is to take effect in possession or enjoyment; or

3. A nonvested property interest that is not validated by subparagraph a of paragraph 1 of subsection B of this section can vest but not within the time required by this section after its creation.

E. EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.

Subsection B of this section shall not apply to:

1. A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

- a. a premarital or postmarital agreement,
- b. a separation or divorce settlement,
- c. an election of a spouse,
- d. a similar arrangement arising out of a prospective, existing, or previous marital relationship between the parties,
- e. a contract to make or not to revoke a will or trust,
- f. a contract to exercise or not to exercise a power of appointment,
- g. a transfer in satisfaction of a duty of support, or
- h. a reciprocal transfer;

2. The power of a fiduciary relating to the administration or management of assets, including the power of a fiduciary to sell, lease, or mortgage property, and the power of a fiduciary to determine principal and income;

3. A power to appoint a fiduciary;

4. A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

5. A nonvested property interest held by a charity, government, or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government, or governmental agency or subdivision;

6. A nonvested property interest in, or a power of appointment with respect to, a trust or other property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants, or their beneficiaries or spouses, the property, income, or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; or

7. A property interest, power of appointment, or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state.

F. APPLICATION.

1. Except as extended by subsection C of this section, this section applies to a nonvested property interest or a power of appointment that is created on or after January 1, 2006. For purposes of this subsection, a nonvested property interest or a power of appointment created by the exercise of a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.

2. This section also applies to a power of appointment that was created before January 1, 2006, but only to the extent that it remains unexercised on January 1, 2006.

3. If a nonvested property interest or a power of appointment was created before January 1, 2006, and is determined in a judicial proceeding commenced on or before January 1, 2006, to violate the rule of this state against perpetuities as that rule existed before January 1, 2006, a court, upon the petition of an interested person, may reform the disposition in the manner that most closely

approximates the manifested plan of distribution of the transferor and is within the limits of the rule against perpetuities applicable when the nonvested property interested or power of appointment was created.

G. RULE OF CONSTRUCTION. With respect to any matter relating to the validity of an interest within the rule of perpetuities, unless a contrary intent appears, it shall be presumed that the transferor of the interest intended that the interest be valid. This section is the sole expression of any rule against perpetuities or remoteness investing in this state. No common-law rule against perpetuities or remoteness in vesting shall exist with respect to any interest or power regardless of whether such interest or power is governed by this section.

H. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

SECTION 3. REPEALER 60 O.S. 2001, Section 175.47, as amended by Section 6, Chapter 217, O.S.L. 2003 (60 O.S. Supp. 2005, Section 175.47), is hereby repealed.

SECTION 4. This act shall become effective November 1, 2006.

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