

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 573

By: Coffee

AS INTRODUCED

An Act relating to homestead and exemptions; amending Sections 2 through 9, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Sections 11 through 18), which relate to the Family Wealth Preservation Trust Act; modifying definitions; updating statutory reference; modifying certain property exempt from attachment; allowing amendment or partial revocation of certain trusts; stating consequence of certain revocation; stating effect of certain provisions on transferability of certain interest; specifying time period to bring certain action; stating applicability of act on certain trust; and providing an effective date.

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, whether or not a resident of this state, establishing or creating a preservation trust;
2. "Oklahoma assets" ~~means~~ includes, but is not limited to:
 - a. a stock, bond, ~~or~~ debenture or other equity or debt interest issued by an Oklahoma-based company,
 - b. a bond or other obligation issued by ~~the State of Oklahoma~~ this state 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 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 or tangible personal property, or any interest therein, having its situs located in the State of Oklahoma this state, and
- f. mutual funds, as defined pursuant to The Investment Company Act of 1940, 15 U.S.C. Section 80a-1 et seq. and The Securities Act of 1933, 15 U.S.C. Section 77a et seq., and common trust funds, as defined pursuant to Section 1010 of Title 6 of the Oklahoma Statutes, to the extent such funds meet one or more of the requirements of subparagraphs a through 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 or other legal entity formed or domesticated qualified to do business in Oklahoma this state and having its a physical location or a principal place of business in Oklahoma, which principal place of business shall be a physical location this state;

5. "Preservation trust" means a trust:

- a. established by a grantor under Oklahoma law,

- b. having at all times as ~~the~~ a trustee or co-trustee an Oklahoma-based bank that maintains a trust department or an Oklahoma-based trust company,
 - c. ~~naming~~ having as beneficiaries only qualified beneficiaries or a qualified beneficiary,
 - d. having ~~as its corpus solely~~ a majority in value of its assets comprised of Oklahoma assets, except that if any asset which qualifies, or is intended to qualify, as an Oklahoma asset ceases or fails to qualify as an Oklahoma asset, the trustee shall have a reasonable period of time following discovery thereof to convert such nonqualifying asset into an Oklahoma asset, 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~~ this state; and
6. "Qualified beneficiary" or "qualified beneficiaries" means:
- a. the ~~natural children, adopted children~~ lineal ancestors and lineal descendants of the grantor or the grantor's spouse, including adopted lineal descendants 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~~ 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), or
 - d. a trust settled for the sole benefit of one or more qualified beneficiaries.

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. Notwithstanding Section 3 of ~~Title 31~~ this title and Section 299.15 of Title 60 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~~ except for any additional property contributed to the preservation trust by the grantor having an aggregate fair market value, determined as of the date of each contribution, minus liabilities to which the property is subject, in excess of One Million Dollars (\$1,000,000.00) in value. Any incremental growth derived from income ~~retained by the trustee or an increase in value of the corpus~~ of a preservation trust ~~above the one-million-dollar limitation~~ shall also be considered protected by this section.

SECTION 3. AMENDATORY Section 4, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 13), is amended to read as follows:

Section 13. A preservation trust may be established as a revocable and amendable or as an irrevocable trust. If the grantor of a preservation trust ~~revokes~~ or partially revokes the preservation trust, the exemption provisions of Section 3 12 of this act title shall not be applicable on the date the grantor revokes the preservation trust to any property received by the grantor as a result of such revocation or partial revocation. The fair market value of any property received by the grantor as a result of a partial revocation shall increase the amount of property which the grantor may contribute to the preservation trust pursuant to Section 12 of this title.

SECTION 4. AMENDATORY Section 5, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 14), is amended to read as follows:

Section 14. The exemptions provided for pursuant to other provisions of the laws of this state shall be independent of and in addition to the exemption provided for pursuant to Section ~~3~~ 12 of this ~~act~~ title.

SECTION 5. AMENDATORY Section 6, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 15), is amended to read as follows:

Section 15. 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~~ this title.

SECTION 6. 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 court or other judicial body shall have the authority to compel a person holding a power of revocation or amendment over a preservation trust to exercise the power of revocation or amendment. The provisions of this act shall be considered restrictions on the transferability of the grantor's beneficial interest in the preservation trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the United States Bankruptcy Code or any successor provisions.

SECTION 7. 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~~ Notwithstanding Section 121 of Title 24 of the Oklahoma Statutes, a cause of action with respect to a fraudulent transfer of property into a preservation trust by a grantor is extinguished unless an action is brought within three (3) years after the transfer was made.

SECTION 8. AMENDATORY Section 9, Chapter 509, O.S.L. 2004 (31 O.S. Supp. 2004, Section 18), is amended to read as follows:

Section 18. A grantor may not establish more than one preservation trust. However, in the event a preservation trust established by a grantor is wholly revoked or terminated, the grantor may establish a new ~~presentation~~ preservation trust, and this act shall be applicable to such new preservation trust.

SECTION 9. This act shall become effective November 1, 2005.

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