

1 ENGROSSED SENATE AMENDMENT
TO
2 ENGROSSED HOUSE
BILL NO. 2535

By: McCullough of the House

and

Anderson of the Senate

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8 An Act relating to property; creating the Oklahoma
Uniform Statutory Rule Against Perpetuities Act;
9 providing short title; providing a statutory rule
against perpetuities; providing time of creation of
10 nonvested property interest or power of appointment;
providing for reformation of certain dispositions;
11 providing exclusions from the statutory rule against
perpetuities; providing for prospective application;
12 exempting certain trusts; amending 60 O.S. 2011,
Section 172, which relates to duration of express
13 trusts; modifying duration; repealing 60 O.S. 2011,
Section 175.47, which relates to suspension of power
14 of alienation; providing for codification; and
providing an effective date.

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17 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
entire bill and insert

18 "[rule against perpetuities - Statutory Rule Against
19 Perpetuities Act - property interest - codification -
effective date]

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

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1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 175.701 of Title 60, unless
3 there is created a duplication in numbering, reads as follows:

4 Sections 1 through 7 of this act shall be known and may be cited
5 as the "Statutory Rule Against Perpetuities Act".

6 SECTION 2. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 175.702 of Title 60, unless
8 there is created a duplication in numbering, reads as follows:

9 A. A nonvested property interest is invalid unless:

10 1. When the interest is created, it is certain to vest or
11 terminate no later than twenty-one (21) years after the death of an
12 individual then alive; or

13 2. The interest either vests or terminates within five hundred
14 (500) years after its creation.

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

17 1. When the power is created, the condition precedent is
18 certain to be satisfied or becomes impossible to satisfy no later
19 than twenty-one (21) years after the death of an individual then
20 alive; or

21 2. The condition precedent either is satisfied or becomes
22 impossible to satisfy within five hundred (500) years after its
23 creation.

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1 C. A nongeneral power of appointment or a general testamentary
2 power of appointment is invalid unless:

3 1. When the power is created, it is certain to be irrevocably
4 exercised or otherwise to terminate no later than twenty-one (21)
5 years after the death of an individual then alive; or

6 2. The power is irrevocably exercised or otherwise terminates
7 within five hundred (500) years after its creation.

8 D. In determining whether a nonvested property interest or a
9 power of appointment is valid under paragraph 1 of subsection A of
10 this section, paragraph 1 of subsection B of this section, or
11 paragraph 1 of subsection C of this section, the possibility that a
12 child will be born to an individual after the individual's death
13 shall be disregarded.

14 E. If, in measuring a period from the creation of a trust or
15 other property arrangement, language in a governing instrument:

16 1. Seeks to disallow the vesting or termination of any interest
17 or trust beyond;

18 2. Seeks to postpone the vesting or termination of any interest
19 or trust until; or

20 3. Seeks to operate in effect in any similar fashion upon, the
21 later of the expiration of a period of time not exceeding twenty-one
22 (21) years after the death of the survivor of specified lives in
23 being at the creation of the trust or other property arrangement or
24 the expiration of a period of time that exceeds or might exceed

1 twenty-one (21) years after the death of the survivor of lives in
2 being at the creation of the trust or other property arrangement,
3 that language is inoperative to the extent it produces a period of
4 time that exceeds the period permitted under subsection A, B or C of
5 this section.

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 175.703 of Title 60, unless
8 there is created a duplication in numbering, reads as follows:

9 A. Except as provided in subsections B and C of this section
10 and in subsection A of Section 6 of this act, the time of creation
11 of a nonvested property interest or a power of appointment is
12 determined under general principles of property law.

13 B. For purposes of the Statutory Rule Against Perpetuities Act,
14 if there is a person who alone can exercise a power created by a
15 governing instrument to become the unqualified beneficial owner of:

16 1. A nonvested property interest; or

17 2. A property interest subject to a power of appointment
18 described in subsection B or C of Section 2 of this act, the
19 nonvested property interest or power of appointment is created when
20 the power to become the unqualified beneficial owner terminates.

21 For purposes of the Statutory Rule Against Perpetuities Act, a joint
22 power with respect to community property held by individuals married
23 to each other is a power exercisable by one person alone.

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1 C. For purposes of the Statutory Rule Against Perpetuities Act,
2 a nonvested property interest or a power of appointment arising from
3 a transfer of property to a previously funded trust or other
4 existing property arrangement is created when the nonvested property
5 interest or power of appointment in the original contribution was
6 created.

7 SECTION 4. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 175.704 of Title 60, unless
9 there is created a duplication in numbering, reads as follows:

10 Upon the petition of an interested person, a court shall reform
11 a disposition in the manner that most closely approximates the
12 transferor's manifested plan of distribution and is within the five
13 hundred (500) years allowed by paragraph 2 of subsection A of
14 Section 2 of this act, paragraph 2 of subsection B of Section 2 of
15 this act, or paragraph 2 of subsection C of Section 2 of this act
16 if:

17 1. A nonvested property interest or a power of appointment
18 becomes invalid under Section 2 of this act;

19 2. A class gift is not but might become invalid under Section 2
20 of this act and the time has arrived when the share of any class
21 member is to take effect in possession or enjoyment; or

22 3. A nonvested property interest that is not validated by
23 paragraph 1 of subsection A of Section 2 of this act can vest but
24 not within five hundred (500) years after its creation.

1 SECTION 5. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 175.705 of Title 60, unless
3 there is created a duplication in numbering, reads as follows:

4 Section 2 of this act does not apply to:

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

- 8 a. a valid antenuptial agreement,
- 9 b. a separation or divorce settlement,
- 10 c. a spouse's election,
- 11 d. a similar arrangement arising out of a prospective,
12 existing, or previous marital relationship between the
13 parties,
- 14 e. a contract to make or not to revoke a will or trust,
- 15 f. a contract to exercise or not to exercise a power of
16 appointment,
- 17 g. a transfer in satisfaction of a duty of support, or
18 h. a reciprocal transfer;

19 2. A fiduciary's power relating to the administration or
20 management of assets, including the power of a fiduciary to sell,
21 lease, or mortgage property, and the power of a fiduciary to
22 determine principal and income;

23 3. A power to appoint a fiduciary;

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

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

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

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

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 175.706 of Title 60, unless
24 there is created a duplication in numbering, reads as follows:

1 A. Except as extended by subsection B of this section, the
2 Statutory Rule Against Perpetuities Act applies to a nonvested
3 property interest or a power of appointment that is created or
4 modified on or after November 1, 2012. For purposes of this
5 section, a nonvested property interest or a power of appointment
6 created by the exercise of a power of appointment is created when
7 the power is irrevocably exercised or when a revocable exercise
8 becomes irrevocable.

9 B. If a nonvested property interest or a power of appointment
10 was created before November 1, 2012, and is determined in a judicial
11 proceeding, commenced on or after November 1, 2012, to violate this
12 state's rule against perpetuities as that rule existed before
13 November 1, 2012, a court upon the petition of an interested person
14 may reform the disposition in the manner that most closely
15 approximates the transferor's manifested plan of distribution and is
16 within the limits of the rule against perpetuities applicable when
17 the nonvested property interest or power of appointment was created.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 175.707 of Title 60, unless
20 there is created a duplication in numbering, reads as follows:

21 The provisions of the Statutory Rule Against Perpetuities Act
22 shall not apply when property is given, granted, bequeathed, or
23 devised to:

24 1. A charitable use;

1 2. Literary, educational, scientific, religious, or charitable
2 corporations for their sole use and benefit;

3 3. Any cemetery corporation, society or association;

4 4. The Department of Mental Health and Substance Abuse
5 Services; or

6 5. Gifts absolute, limited, or in trust, for the advancement of
7 medical science to an incorporated state society of physicians and
8 surgeons.

9 SECTION 8. AMENDATORY 60 O.S. 2011, Section 172, is
10 amended to read as follows:

11 Section 172. No such express trust shall be valid unless
12 created first, by a written instrument subscribed by the grantor or
13 grantors duly acknowledged, as conveyances of real estate are
14 acknowledged, and recorded in the office of the county clerk of each
15 county wherein is situated any real estate conveyed to such trustee,
16 as well as in the county where the principal property is located or
17 business conducted; or, second, by a will duly executed, as required
18 by the law of the state. Such express trusts shall be limited in
19 the duration thereof either to a definite period of not to exceed
20 twenty-one (21) years, or to the period of the life or lives of the
21 beneficiary or beneficiaries thereof in being at the time of the
22 creation of the trust permitted under the Statutory Rule Against
23 Perpetuities Act. The instrument creating the trust shall specify
24 the period of duration thereof within the limitations herein

1 provided. When such express trust has originally been created for a
2 definite term of years by a writing other than a will, the time of
3 the existence of such express trust may be extended for a period of
4 not exceeding twenty-one (21) years at any one time, by a written
5 instrument subscribed by all beneficiaries of such express trust,
6 duly acknowledged as are conveyances of real estate, and recorded in
7 the office of the county clerk of the county where is located the
8 principal office of said trust, and in each county where is situated
9 any real estate owned by such express trust. Provided the
10 provisions of this section shall be applicable and limited to
11 business trusts and shall have no application to personal trusts.

12 SECTION 9. REPEALER 60 O.S. 2011, Section 175.47, is
13 hereby repealed.

14 SECTION 10. This act shall become effective November 1, 2012."
15 and when the title is restored, amend the title to
16 conform
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1 Passed the Senate the 19th day of April, 2012.

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3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

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8 _____
9 Presiding Officer of the House
10 of Representatives