

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2535**

By: McCullough of the House and Anderson of the Senate

Title: Property; creating the Statutory Rule Against Perpetuities Act; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment and that the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**HOUSE CONFEREES**

Jordan Fred Jordan

Martin (Steve) Steve Martin

McCullough W. E. McCullough

Moore J. H. Moore

Morrisette \_\_\_\_\_

Roan Paul D. Roan

Roberts (Dustin) D. Roberts

Schwartz \_\_\_\_\_

Sherrer Ben Sherrer

Wesselhoft Paul Wesselhoft

Williams \_\_\_\_\_

**SENATE CONFEREES**

Anderson \_\_\_\_\_

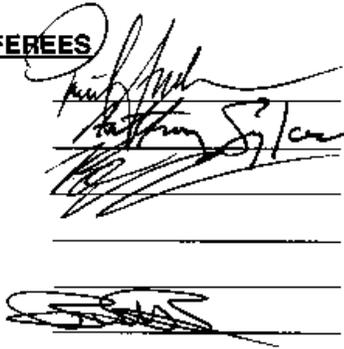
Sykes \_\_\_\_\_

Johnson (Rob) \_\_\_\_\_

Lerblance \_\_\_\_\_

Laster \_\_\_\_\_

Brown \_\_\_\_\_



House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 2535

By: McCullough of the House

and

Anderson of the Senate

7  
8  
9 CONFERENCE COMMITTEE SUBSTITUTE

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

24  
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 175.701 of Title 60, unless  
there is created a duplication in numbering, reads as follows:

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

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

6 A. A nonvested property interest is invalid unless:

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

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

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

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

18 2. The condition precedent either is satisfied or becomes  
19 impossible to satisfy within five hundred (500) years after its  
20 creation.

21 C. A nongeneral power of appointment or a general testamentary  
22 power of appointment is invalid unless:

23

24

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

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

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

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

14        1. Seeks to disallow the vesting or termination of any interest  
15 or trust beyond;

16        2. Seeks to postpone the vesting or termination of any interest  
17 or trust until; or

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

1 arrangement, that language is inoperative to the extent it produces  
2 a period of time that exceeds the period permitted under subsection  
3 A, B or C of this section.

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

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

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

14 1. A nonvested property interest; or

15 2. A property interest subject to a power of appointment  
16 described in subsection B or C of Section 2 of this act,

17 the nonvested property interest or power of appointment is created  
18 when the power to become the unqualified beneficial owner

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

23 C. For purposes of the Statutory Rule Against Perpetuities Act,  
24 a nonvested property interest or a power of appointment arising from

1 a transfer of property to a previously funded trust or other  
2 existing property arrangement is created when the nonvested property  
3 interest or power of appointment in the original contribution was  
4 created.

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

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

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

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

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

23

24

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;

24

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  
16 53-2-10486 SD 05/10/12  
17  
18  
19  
20  
21  
22  
23  
24