

1 ENGROSSED HOUSE
2 BILL NO. 1361

By: Peters of the House

and

Johnson (Rob) of the Senate

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7 An Act relating to homestead and exemptions; amending
8 Sections 2, 3 and 8, Chapter 509, O.S.L. 2004, as
9 amended by Sections 1, 2 and 7, Chapter 438, O.S.L.
10 2005 (31 O.S. Supp. 2010, Sections 11, 12 and 17),
11 which relate to the Family Wealth Preservation Trust
12 Act; modifying definition; removing exception
13 allowing for attachment of certain trust funds;
14 requiring notice of date of certain transfer to be
15 filed with the Oklahoma County clerk; and providing
16 an effective date.

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

18 SECTION 1. AMENDATORY Section 2, Chapter 509, O.S.L.
19 2004, as amended by Section 1, Chapter 438, O.S.L. 2005 (31 O.S.
20 Supp. 2010, Section 11), is amended to read as follows:

21 Section 11. As used in the Family Wealth Preservation Trust
22 Act:

23 1. "Grantor" means an individual, whether or not a resident of
24 this state, establishing or creating a preservation trust;

2. "Oklahoma assets" includes:

a. a stock, bond, debenture, membership interest,

partnership interest, or other equity or debt interest

1 issued by an Oklahoma-based company, without reference
2 to assets owned by the Oklahoma-based company,

3 b. a bond or other obligation issued by this state or an
4 Oklahoma governmental agency,

5 c. a bond or other obligation issued by a county of this
6 state, by a municipal government located in this
7 state, by a school district located in this state or
8 by any public trust for the benefit of either this
9 state or one or more political subdivisions of this
10 state,

11 d. an account in an Oklahoma-based bank. As used in this
12 subparagraph, "account" means a demand, time, savings
13 or passbook type of account or a certificate of
14 deposit type of account,

15 e. real or tangible personal property, or any interest
16 therein, having a situs in this state, which shall
17 include, but not be limited to:

18 (1) mineral interests, or

19 (2) promissory notes secured primarily by real or
20 tangible personal property or both,

21 f. any security backed exclusively by promissory notes,
22 if at least a majority in value of such promissory
23 notes are secured by real or tangible personal
24 property having a situs in this state or both, and

1 g. mutual funds, as defined pursuant to The Investment
2 Company Act of 1940, 15 U.S.C., Section 80a-1 et seq.
3 and The Securities Act of 1933, 15 U.S.C., Section 77a
4 et seq., and common trust funds, as defined pursuant
5 to Section 1010 of Title 6 of the Oklahoma Statutes,
6 to the extent the assets within such funds meet one or
7 more of the requirements listed in subparagraphs a
8 through f of this paragraph;

9 3. a. "Oklahoma-based bank" means a bank, savings
10 association or credit union which both:

11 (1) takes deposits insured by the Federal Deposit
12 Insurance Corporation or the National Credit
13 Union Administration, and

14 (2) has a place of business in Oklahoma, which shall
15 be a physical location, and

16 b. "Oklahoma-based trust company" means a trust company
17 chartered under the laws of this state or nationally
18 chartered and having a place of business in Oklahoma,
19 which shall be a physical location;

20 4. "Oklahoma-based company" means a corporation, limited
21 liability company, limited partnership, limited liability
22 partnership or other legal entity formed or qualified to do business
23 in this state and having its principal place of business in this
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1 state, which principal place of business shall be a physical
2 location;

- 3 5. "Preservation trust" means a trust:
- 4 a. established by a grantor under Oklahoma law,
 - 5 b. having at all times as a trustee or cotrustee an
6 Oklahoma-based bank that maintains a trust department
7 or an Oklahoma-based trust company,
 - 8 c. having as beneficiaries only qualified beneficiaries
9 or a qualified beneficiary,
 - 10 d. having a majority in value of its assets comprised of
11 Oklahoma assets, except that if any asset which
12 qualifies, or is intended to qualify, as an Oklahoma
13 asset ceases or fails to qualify as an Oklahoma asset,
14 the trustee shall have a reasonable period of time
15 following discovery thereof to convert such
16 nonqualifying asset into an Oklahoma asset, and
 - 17 e. reciting in its terms that the income generated from
18 the corpus of the trust is subject to the income tax
19 laws of this state; and

- 20 6. "Qualified beneficiary" or "qualified beneficiaries" means:
- 21 a. the lineal ancestors and lineal descendants of the
22 grantor or the grantor's spouse, including adopted
23 lineal descendants if they were under the age of
24 eighteen (18) at the time of the adoption,

- 1 b. the spouse of the grantor,
2 c. a nonprofit organization qualified under the
3 provisions of the Internal Revenue Code of 1986, 26
4 U.S.C., Section 501(c)(3), or
5 d. a trust settled for the sole benefit of one or more
6 qualified beneficiaries.

7 SECTION 2. AMENDATORY Section 3, Chapter 509, O.S.L.
8 2004, as amended by Section 2, Chapter 438, O.S.L. 2005 (31 O.S.
9 Supp. 2010, Section 12), is amended to read as follows:

10 Section 12. Notwithstanding Section 3 of this title and Section
11 299.15 of Title 60 of the Oklahoma Statutes, the corpus and income
12 of a preservation trust shall be exempt from attachment or execution
13 and every other species of forced sale and no judgment, decree, or
14 execution can be a lien on the trust for the payment of debts of a
15 grantor, except a child support judgment, ~~except for any additional~~
16 ~~property contributed to the preservation trust by the grantor having~~
17 ~~an aggregate fair market value, determined as of the date of each~~
18 ~~contribution, minus liabilities to which the property is subject, in~~
19 ~~excess of One Million Dollars (\$1,000,000.00).~~ Any incremental
20 growth derived from income or an increase in value of the corpus of
21 a preservation trust shall also be considered protected by this
22 section. Transfer of an asset to a preservation trust does not
23 affect any mortgage, security interest or lien to which that asset
24 is subject.

1 SECTION 3. AMENDATORY Section 8, Chapter 509, O.S.L.
2 2004, as amended by Section 7, Chapter 438, O.S.L. 2005 (31 O.S.
3 Supp. 2010, Section 17), is amended to read as follows:

4 Section 17. Any transfer of monies or property by a grantor to
5 a preservation trust shall be subject to the provisions of the
6 Uniform Fraudulent Transfer Act. Notice of the date of transfer of
7 money or property to a preservation trust shall be filed in the
8 office of the clerk of Oklahoma County.

9 SECTION 4. This act shall become effective November 1, 2011.

10 Passed the House of Representatives the 10th day of March, 2011.

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14 Presiding Officer of the House of
Representatives

15 Passed the Senate the ____ day of _____, 2011.

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19 Presiding Officer of the Senate

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