SENATE FLOOR VERSION
April 9, 2012

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2535 By: McCullough of the House

and

Anderson of the Senate

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

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:

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

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

A. A nonvested property interest is invalid unless:

1. 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

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

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

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

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

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

1. 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

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

D. In determining whether a nonvested property interest or a power of appointment is valid under paragraph 1 of subsection A of this section, paragraph 1 of subsection B of this section, or

paragraph 1 of subsection C of this section, the possibility that a child will be born to an individual after the individual's death shall be disregarded.

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

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

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

3. Seeks to operate in effect in any similar fashion upon, the later of the expiration of a period of time not exceeding twenty-one (21) years after the death of the survivor of specified lives in being at the creation of the trust or other property arrangement or 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 the period permitted under subsection A, B or C of this section.

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

A. Except as provided in subsections B and C of this section and in subsection A of Section 6 of this act, the time of creation

of a nonvested property interest or a power of appointment is determined under general principles of property law.

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

1. A nonvested property interest; or

2. A property interest subject to a power of appointment described in subsection B or C of Section 2 of this act, the nonvested property interest or power of appointment is created when the power to become the unqualified beneficial owner terminates. For purposes of the Statutory Rule Against Perpetuities Act, a joint power with respect to community property held by individuals married to each other is a power exercisable by one person alone.

C. For purposes of the Statutory Rule Against Perpetuities Act, 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.

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

Upon the petition of an interested person, a court shall reform a disposition in the manner that most closely approximates the

transferor's manifested plan of distribution and is within the five hundred (500) years allowed by paragraph 2 of subsection A of Section 2 of this act, paragraph 2 of subsection B of Section 2 of this act, or paragraph 2 of subsection C of Section 2 of this act if:

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

2. A class gift is not but might become invalid under Section 2 of this act 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 paragraph 1 of subsection A of Section 2 of this act can vest but not within five hundred (500) years after its creation.

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

Section 2 of this act does 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 valid antenuptial agreement,

b. a separation or divorce settlement,

c. a spouse's election,

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. A fiduciary's power 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.

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

A. Except as extended by subsection B of this section, the Statutory Rule Against Perpetuities Act applies to a nonvested property interest or a power of appointment that is created or modified on or after November 1, 2012. For purposes of this section, 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.

B. If a nonvested property interest or a power of appointment was created before November 1, 2012, and is determined in a judicial proceeding, commenced on or after November 1, 2012, to violate this

state's rule against perpetuities as that rule existed before November 1, 2012, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of distribution and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.

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

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

1. A charitable use;

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

3. Any cemetery corporation, society or association;

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

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

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

Section 172. No such express trust shall be valid unless created first, by a written instrument subscribed by the grantor or grantors duly acknowledged, as conveyances of real estate are acknowledged, and recorded in the office of the county clerk of each county wherein is situated any real estate conveyed to such trustee, as well as in the county where the principal property is located or business conducted; or, second, by a will duly executed, as required by the law of the state. Such express trusts shall be limited in the duration thereof either to a definite period of not to exceed twenty-one (21) years, or to the period of the life or lives of the beneficiary or beneficiaries thereof in being at the time of the creation of the trust <u>permitted under the Statutory Rule Against Perpetuities Act</u>. The instrument creating the trust shall specify the period of duration thereof within the limitations herein provided. When such express trust has originally been created for a definite term of years by a writing other than a will, the time of the existence of such express trust may be extended for a period of not exceeding twenty-one (21) years at any one time, by a written instrument subscribed by all beneficiaries of such express trust, duly acknowledged as are conveyances of real estate, and recorded in the office of the county clerk of the county where is located the principal office of said trust, and in each county where is situated any real estate owned by such express trust. Provided the

provisions of this section shall be applicable and limited to business trusts and shall have no application to personal trusts.

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

SECTION 10. This act shall become effective November 1, 2012.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-3-12 - DO PASS, As Amended.