

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2535

By: McCullough

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5
6 AS INTRODUCED

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

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 175.701 of Title 60, unless
24 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 "Oklahoma Uniform Statutory Rule Against Perpetuities Act".

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

4 STATUTORY RULE AGAINST PERPETUITIES.

5 A. A nonvested property interest is invalid unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 WHEN NONVESTED PROPERTY INTEREST OR POWER OF APPOINTMENT
5 CREATED.

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

10 B. For purposes of the Oklahoma Uniform Statutory Rule Against
11 Perpetuities Act, if there is a person who alone can exercise a
12 power created by a governing instrument to become the unqualified
13 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 Oklahoma Uniform Statutory Rule
20 Against Perpetuities Act, a joint power with respect to community
21 property held by individuals married to each other is a power
22 exercisable by one person alone.

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

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

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

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

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

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

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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 EXCLUSIONS FROM STATUTORY RULE AGAINST PERPETUITIES.

5 Section 2 of this act does not apply to:

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

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

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

24 3. A power to appoint a fiduciary;

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 PROSPECTIVE APPLICATION.

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

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

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

22 CERTAIN TRUSTS EXEMPT FROM RULE AGAINST PERPETUITIES.
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1 The provisions of the Uniform Statutory Rule Against
2 Perpetuities Act shall not apply when property is given, granted,
3 bequeathed, or devised to:

4 1. A charitable use;

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

7 3. Any cemetery corporation, society or association;

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

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

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

15 Section 172. No such express trust shall be valid unless
16 created first, by a written instrument subscribed by the grantor or
17 grantors duly acknowledged, as conveyances of real estate are
18 acknowledged, and recorded in the office of the county clerk of each
19 county wherein is situated any real estate conveyed to such trustee,
20 as well as in the county where the principal property is located or
21 business conducted; or, second, by a will duly executed, as required
22 by the law of the state. Such express trusts shall be limited in
23 the duration thereof ~~either to a definite period of not to exceed~~
24 ~~twenty-one (21) years, or to the period of the life or lives of the~~

1 ~~beneficiary or beneficiaries thereof in being at the time of the~~
2 ~~creation of the trust~~ permitted under the Oklahoma Uniform Statutory
3 Rule Against Perpetuities Act. The instrument creating the trust
4 shall specify the period of duration thereof within the limitations
5 herein provided. When such express trust has originally been
6 created for a definite term of years by a writing other than a will,
7 the time of the existence of such express trust may be extended for
8 a period of not exceeding twenty-one (21) years at any one time, by
9 a written instrument subscribed by all beneficiaries of such express
10 trust, duly acknowledged as are conveyances of real estate, and
11 recorded in the office of the county clerk of the county where is
12 located the principal office of said trust, and in each county where
13 is situated any real estate owned by such express trust. Provided
14 the provisions of this section shall be applicable and limited to
15 business trusts and shall have no application to personal trusts.

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

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

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