

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1361

By: Peters

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5  
6 AS INTRODUCED

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:

- 1 a. a stock, bond, debenture, membership interest,  
2 partnership interest, or other equity or debt interest  
3 issued by an Oklahoma-based company, without reference  
4 to assets owned by the Oklahoma-based company,
- 5 b. a bond or other obligation issued by this state or an  
6 Oklahoma governmental agency,
- 7 c. a bond or other obligation issued by a county of this  
8 state, by a municipal government located in this  
9 state, by a school district located in this state or  
10 by any public trust for the benefit of either this  
11 state or one or more political subdivisions of this  
12 state,
- 13 d. an account in an Oklahoma-based bank. As used in this  
14 subparagraph, "account" means a demand, time, savings  
15 or passbook type of account or a certificate of  
16 deposit type of account,
- 17 e. real or tangible personal property, or any interest  
18 therein, having a situs in this state, which shall  
19 include, but not be limited to:
- 20 (1) mineral interests, or  
21 (2) promissory notes secured primarily by real or  
22 tangible personal property or both,
- 23 f. any security backed exclusively by promissory notes,  
24 if at least a majority in value of such promissory

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

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

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

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

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

22 4. "Oklahoma-based company" means a corporation, limited  
23 liability company, limited partnership, limited liability  
24 partnership or other legal entity formed or qualified to do business

1 in this state and having its principal place of business in this  
2 state, which principal place of business shall be a physical  
3 location;

4 5. "Preservation trust" means a trust:

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

21 6. "Qualified beneficiary" or "qualified beneficiaries" means:

- 22 a. the lineal ancestors and lineal descendants of the  
23 grantor or the grantor's spouse, including adopted  
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- 1 lineal descendants if they were under the age of  
2 eighteen (18) at the time of the adoption,
- 3 b. the spouse of the grantor,
- 4 c. a nonprofit organization qualified under the  
5 provisions of the Internal Revenue Code of 1986, 26  
6 U.S.C., Section 501(c)(3), or
- 7 d. a trust settled for the sole benefit of one or more  
8 qualified beneficiaries.

9 SECTION 2. AMENDATORY Section 3, Chapter 509, O.S.L.  
10 2004, as amended by Section 2, Chapter 438, O.S.L. 2005 (31 O.S.  
11 Supp. 2010, Section 12), is amended to read as follows:

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

1 affect any mortgage, security interest or lien to which that asset  
2 is subject.

3 SECTION 3. AMENDATORY Section 8, Chapter 509, O.S.L.  
4 2004, as amended by Section 7, Chapter 438, O.S.L. 2005 (31 O.S.  
5 Supp. 2010, Section 17), is amended to read as follows:

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

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

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