STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

SENATE BILL 1315 By: Crain

AS INTRODUCED

An Act relating to the rule against perpetuities; creating the Oklahoma Uniform Statutory Rule Against Perpetuities Act; providing short title; amending 60 O.S. 2011, Section 172, which relates to express trusts; conforming language; establishing requirements for validity of nonvested property interest; establishing requirements for validity of certain powers of appointment; establishing requirements for language in certain governing instruments; specifying time of creation certain property interest or powers of appointment; requiring reformation of certain disposition; providing exceptions; stating applicability of act; providing exemptions for certain trusts; repealing 60 O.S. 2011, Section 175.47, which relates to suspension of absolute power of alienation; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Uniform Statutory Rule Against Perpetuities Act".

SECTION 2. 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~~ permitted under Sections 3 through 8 of this act. 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.75 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, paragraph 1 of subsection B, 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 is 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:

a. 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

b. 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 twenty-one (21) years after the death of the survivor of the specified lives.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.76 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 7 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 this 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 3 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 this 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 this 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 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.77 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 500 years allowed by paragraph 2 of subsection A, paragraph 2 of subsection B, or paragraph 2 of subsection C of Section 3 of this act if:

1. A nonvested property interest or a power of appointment becomes invalid under Section 3 of this act;

2. A class gift is not but might become invalid under Section 3 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 3 of this act can vest but not within five hundred (500) years after its creation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.78 of Title 60, unless there is created a duplication in numbering, reads as follows:

Section 3 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.79 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as extended by subsection B of this section, this act applies to a nonvested property interest or a power of appointment that is created or modified on or after the effective date of this act. 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 the effective date of this act and is determined in a judicial proceeding, commenced on or after the effective date of this act, to violate this state's rule against perpetuities as that rule existed before the effective date of this act, 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.80 of Title 60, unless there is created a duplication in numbering, reads as follows:

The provisions of the Uniform 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 as provided in Section 2-111 of Title 43A of the Oklahoma Statutes; or

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

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

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

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