

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 1553

By: McCullough

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7 COMMITTEE SUBSTITUTE

8 An Act relating to property; creating the Statutory
9 Rule Against Perpetuities Act; providing short title;
10 providing a statutory rule against perpetuities;
11 providing time of creation of nonvested property
12 interest or power of appointment; providing for
13 reformation of certain dispositions; providing
14 exclusions from the statutory rule against
15 perpetuities; providing for prospective application;
16 exempting certain trusts; amending 60 O.S. 2011,
17 Sections 31 and 32, which relate to suspension of
18 alienation; providing that power of alienation is not
19 suspended if trustee has power to sell; providing
20 that ownership is not suspended under certain
21 circumstances; amending 60 O.S. 2011, Section 172,
22 which relates to duration of express trusts;
23 modifying duration; repealing 60 O.S. 2011, Section
24 175.47, which relates to suspension of power of
alienation; providing for codification; 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 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:

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

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

6 A. A nonvested property interest is invalid unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 arrangement, that language is inoperative to the extent it produces
2 a period of time that exceeds the period permitted under subsection
3 A, B or C of this section.

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

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

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

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

1 a transfer of property to a previously funded trust or other
2 existing property arrangement is created when the nonvested property
3 interest or power of appointment in the original contribution was
4 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 Upon the petition of an interested person, a court shall reform
9 a disposition in the manner that most closely approximates the
10 transferor's manifested plan of distribution and is within the five
11 hundred (500) years allowed by paragraph 2 of subsection A of
12 Section 2 of this act, paragraph 2 of subsection B of Section 2 of
13 this act, or paragraph 2 of subsection C of Section 2 of this act
14 if:

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

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

20 3. A nonvested property interest that is not validated by
21 paragraph 1 of subsection A of Section 2 of this act can vest but
22 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 Section 2 of this act does not apply to:

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

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

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

23 3. A power to appoint a fiduciary;

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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 benefit,
11 disability benefit, death benefit, income deferral, or other current
12 or deferred benefit plan for one or more employees, independent
13 contractors, or their beneficiaries or spouses, to which
14 contributions are made for the purpose of distributing to or for the
15 benefit of the participants or their beneficiaries or spouses the
16 property, income, or principal in the trust or other property
17 arrangement, except a nonvested property interest or a power of
18 appointment that is created by an election of a participant or a
19 beneficiary or spouse; or

20 7. A property interest, power of appointment, or arrangement
21 that was not subject to the common-law rule against perpetuities or
22 is excluded by another statute of this state.

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

4 A. Except as extended by subsection B of this section, the
5 Statutory Rule Against Perpetuities Act applies to a nonvested
6 property interest or a power of appointment that is created or
7 modified on or after November 1, 2013. For purposes of this
8 section, a nonvested property interest or a power of appointment
9 created by the exercise of a power of appointment is created when
10 the power is irrevocably exercised or when a revocable exercise
11 becomes irrevocable.

12 B. If a nonvested property interest or a power of appointment
13 was created before November 1, 2013, and is determined in a judicial
14 proceeding, commenced on or after November 1, 2013, to violate this
15 state's rule against perpetuities as that rule existed before
16 November 1, 2013, a court upon the petition of an interested person
17 may reform the disposition in the manner that most closely
18 approximates the transferor's manifested plan of distribution and is
19 within the limits of the rule against perpetuities applicable when
20 the nonvested property interest or power of appointment was created.

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

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1 The provisions of the Statutory Rule Against Perpetuities Act
2 shall not apply when property is given, granted, bequeathed, or
3 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 31, is
14 amended to read as follows:

15 Section 31. The absolute power of alienation shall not be
16 suspended, by any limitation or condition whatever, for a longer
17 period than during the continuance of the lives of persons in being
18 at the creation of the limitation or condition plus twenty-one (21)
19 years, except as provided in Section 34 of ~~Title 60 of the Oklahoma~~
20 ~~Statutes~~ this title. For purposes of this section, a power of
21 alienation is not suspended if a trustee of a trust has the power,
22 either express or implied, to sell trust property.

23 SECTION 9. AMENDATORY 60 O.S. 2011, Section 32, is
24 amended to read as follows:

1 Section 32. The absolute ownership of a term of years cannot be
2 suspended for a longer period than the absolute power of alienation
3 can be suspended in respect to a fee. For purposes of this section,
4 an ownership of a term of years is not suspended if a trustee of a
5 trust has the power, either express or implied, to sell trust
6 property.

7 SECTION 10. AMENDATORY 60 O.S. 2011, Section 172, is
8 amended to read as follows:

9 Section 172. No such express trust shall be valid unless
10 created first, by a written instrument subscribed by the grantor or
11 grantors duly acknowledged, as conveyances of real estate are
12 acknowledged, and recorded in the office of the county clerk of each
13 county wherein is situated any real estate conveyed to such trustee,
14 as well as in the county where the principal property is located or
15 business conducted; or, second, by a will duly executed, as required
16 by the law of the state. Such express trusts shall be limited in
17 the duration thereof ~~either to a definite period of not to exceed~~
18 ~~twenty-one (21) years, or to the period of the life or lives of the~~
19 ~~beneficiary or beneficiaries thereof in being at the time of the~~
20 ~~creation of the trust~~ permitted under the Statutory Rule Against
21 Perpetuities Act. The instrument creating the trust shall specify
22 the period of duration thereof within the limitations herein
23 provided. When such express trust has originally been created for a
24 definite term of years by a writing other than a will, the time of

1 the existence of such express trust may be extended for a period of
2 not exceeding twenty-one (21) years at any one time, by a written
3 instrument subscribed by all beneficiaries of such express trust,
4 duly acknowledged as are conveyances of real estate, and recorded in
5 the office of the county clerk of the county where is located the
6 principal office of said trust, and in each county where is situated
7 any real estate owned by such express trust. Provided the
8 provisions of this section shall be applicable and limited to
9 business trusts and shall have no application to personal trusts.

10 SECTION 11. REPEALER 60 O.S. 2011, Section 175.47, is
11 hereby repealed.

12 SECTION 12. This act shall become effective November 1, 2013.

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