

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1553

By: McCullough of the House

and

Anderson of the Senate

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10 COMMITTEE SUBSTITUTE

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

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 175.701 of Title 60, unless
3 there is created a duplication in numbering, reads as follows:

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

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

9 A. A nonvested property interest is invalid unless:

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

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

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

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

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

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

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

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

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

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

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

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

20 3. Seeks to operate in effect in any similar fashion upon,
21 the later of the expiration of a period of time not exceeding
22 twenty-one (21) years after the death of the survivor of specified
23 lives in being at the creation of the trust or other property
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1 arrangement or the expiration of a period of time that exceeds or
2 might exceed twenty-one (21) years after the death of the survivor
3 of lives in being at the creation of the trust or other property
4 arrangement, that language is inoperative to the extent it produces
5 a period of time that exceeds the period permitted under subsection
6 A, B or C of this section.

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

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

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

- 17 1. A nonvested property interest; or
- 18 2. A property interest subject to a power of appointment
19 described in subsection B or C of Section 2 of this act,
20 the nonvested property interest or power of appointment is created
21 when the power to become the unqualified beneficial owner
22 terminates. For purposes of the Statutory Rule Against Perpetuities
23 Act, a joint power with respect to community property held by

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 individuals married to each other is a power exercisable by one
2 person alone.

3 C. For purposes of the Statutory Rule Against Perpetuities Act,
4 a nonvested property interest or a power of appointment arising from
5 a transfer of property to a previously funded trust or other
6 existing property arrangement is created when the nonvested property
7 interest or power of appointment in the original contribution was
8 created.

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

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

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

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

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

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

7 Section 2 of this act does not apply to:

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

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

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

3 3. A power to appoint a fiduciary;

4 4. A discretionary power of a trustee to distribute principal
5 before termination of a trust to a beneficiary having an
6 indefeasibly vested interest in the income and principal;

7 5. A nonvested property interest held by a charity, government,
8 or governmental agency or subdivision, if the nonvested property
9 interest is preceded by an interest held by another charity,
10 government, or governmental agency or subdivision;

11 6. A nonvested property interest in or a power of appointment
12 with respect to a trust or other property arrangement forming part
13 of a pension, profit-sharing, stock bonus, health benefit,
14 disability benefit, death benefit, income deferral, or other current
15 or deferred benefit plan for one or more employees, independent
16 contractors, or their beneficiaries or spouses, to which
17 contributions are made for the purpose of distributing to or for the
18 benefit of the participants or their beneficiaries or spouses the
19 property, income, or principal in the trust or other property
20 arrangement, except a nonvested property interest or a power of
21 appointment that is created by an election of a participant or a
22 beneficiary or spouse; or

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

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

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

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

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

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

7 1. A charitable use;

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

10 3. Any cemetery corporation, society or association;

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

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

16 SECTION 8. AMENDATORY 60 O.S. 2011, Section 31, is
17 amended to read as follows:

18 Section 31. The absolute power of alienation shall not be
19 suspended, by any limitation or condition whatever, for a longer
20 period than during the continuance of the lives of persons in being
21 at the creation of the limitation or condition plus twenty-one (21)
22 years, except as provided in Section 34 of ~~Title 60 of the Oklahoma~~
23 ~~Statutes~~ this title. For purposes of this section, a power of

1 alienation is not suspended if a trustee of a trust has the power,
2 either express or implied, to sell trust property.

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

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

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

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

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

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

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

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/27/2013 - DO
20 PASS, As Amended and Coauthored.

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