

1 **SENATE FLOOR VERSION**

2 February 11, 2014

3 **AS AMENDED**

4 SENATE BILL NO. 1904

5 By: Sykes and Ivester of the
6 Senate

7 and

8 McDaniel (Randy) of the
9 House

10 **An Act relating to the Family Wealth Preservation
11 Trust Act; amending 31 O.S. 2011, Sections 11 and 12,
12 which relate to definitions and exemption from
13 attachment; modifying definition; removing certain
14 exception; and providing an effective date.**

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

16 SECTION 1. AMENDATORY 31 O.S. 2011, Section 11, is
17 amended to read as follows:

18 Section 11. As used in the Family Wealth Preservation Trust
19 Act:

20 1. "Grantor" means an individual, whether or not a resident of
21 this state, establishing or creating a preservation trust;

22 2. "Oklahoma assets" includes:

- 23 a. a stock, bond, debenture, membership interest,
24 partnership interest, or other equity or debt interest
issued by an Oklahoma-based company, without reference
to assets owned by the Oklahoma-based company,

- 1 b. a bond or other obligation issued by this state or an
2 Oklahoma governmental agency,
- 3 c. a bond or other obligation issued by a county of this
4 state, by a municipal government located in this
5 state, by a school district located in this state or
6 by any public trust for the benefit of either this
7 state or one or more political subdivisions of this
8 state,
- 9 d. an account in an Oklahoma-based bank. As used in this
10 subparagraph, "account" means a demand, time, savings
11 or passbook type of account or a certificate of
12 deposit type of account,
- 13 e. real or tangible personal property, or any interest
14 therein, having a situs in this state, which shall
15 include, but not be limited to:
- 16 (1) mineral interests, or
17 (2) promissory notes secured primarily by real or
18 tangible personal property or both,
- 19 f. any security backed exclusively by promissory notes,
20 if at least a majority in value of such promissory
21 notes are secured by real or tangible personal
22 property having a situs in this state or both, and
- 23 g. mutual funds, as defined pursuant to The Investment
24 Company Act of 1940, 15 U.S.C., Section 80a-1 et seq.

1 and The Securities Act of 1933, 15 U.S.C., Section 77a
2 et seq., and common trust funds, as defined pursuant
3 to Section 1010 of Title 6 of the Oklahoma Statutes,
4 to the extent the assets within such funds meet one or
5 more of the requirements listed in subparagraphs a
6 through f of this paragraph;

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

9 (1) takes deposits insured by the Federal Deposit
10 Insurance Corporation or the National Credit
11 Union Administration, and

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

14 b. "Oklahoma-based trust company" means a trust company
15 chartered under the laws of this state or nationally
16 chartered and having a place of business in Oklahoma,
17 which shall be a physical location;

18 4. "Oklahoma-based company" means a corporation, limited
19 liability company, limited partnership, limited liability
20 partnership or other legal entity formed or qualified to do business
21 in this state and having its principal place of business in this
22 state, which principal place of business shall be a physical
23 location;

24 5. "Preservation trust" means a trust:

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

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

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

SECTION 2. AMENDATORY 31 O.S. 2011, Section 12, is amended to read as follows:

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

1 SECTION 3. This act shall become effective November 1, 2014.

2 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
3 February 11, 2014 - DO PASS AS AMENDED
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