

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1553

By: McCullough

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5  
6 AS INTRODUCED

7 An Act relating to property; creating the Statutory  
8 Rule Against Perpetuities Act; providing short title;  
9 providing a statutory rule against perpetuities;  
10 providing time of creation of nonvested property  
11 interest or power of appointment; providing for  
12 reformation of certain dispositions; providing  
13 exclusions from the statutory rule against  
14 perpetuities; providing for prospective application;  
15 exempting certain trusts; amending 60 O.S. 2011,  
16 Section 31, which relates to suspension of  
17 alienation; modifying permissible duration; amending  
18 60 O.S. 2011, Section 172, which relates to duration  
19 of express trusts; modifying duration; repealing 60  
20 O.S. 2011, Section 175.47, which relates to  
21 suspension of power of alienation; providing for  
22 codification; and providing an effective date.  
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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:

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

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

4           A. A nonvested property interest is invalid unless:

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

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

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

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

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

19          C. A nongeneral power of appointment or a general testamentary  
20 power of appointment is invalid unless:

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

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

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

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

11           1. Seeks to disallow the vesting or termination of any interest  
12 or trust beyond;

13           2. Seeks to postpone the vesting or termination of any interest  
14 or trust until; or

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

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

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

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

11 1. A nonvested property interest; or

12 2. A property interest subject to a power of appointment  
13 described in subsection B or C of Section 2 of this act,

14 the nonvested property interest or power of appointment is created  
15 when the power to become the unqualified beneficial owner

16 terminates. For purposes of the Statutory Rule Against Perpetuities  
17 Act, a joint power with respect to community property held by  
18 individuals married to each other is a power exercisable by one  
19 person alone.

20 C. For purposes of the Statutory Rule Against Perpetuities Act,  
21 a nonvested property interest or a power of appointment arising from  
22 a transfer of property to a previously funded trust or other  
23 existing property arrangement is created when the nonvested property

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1 interest or power of appointment in the original contribution was  
2 created.

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

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

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

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

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

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

24 Section 2 of this act does not apply to:

- 1        1. A nonvested property interest or a power of appointment  
2 arising out of a nondonative transfer, except a nonvested property  
3 interest or a power of appointment arising out of:
  - 4            a. a valid antenuptial agreement,
  - 5            b. a separation or divorce settlement,
  - 6            c. a spouse's election,
  - 7            d. a similar arrangement arising out of a prospective,  
8                existing, or previous marital relationship between the  
9                parties,
  - 10           e. a contract to make or not to revoke a will or trust,
  - 11           f. a contract to exercise or not to exercise a power of  
12                appointment,
  - 13           g. a transfer in satisfaction of a duty of support, or  
14           h. a reciprocal transfer;
- 15        2. A fiduciary's power relating to the administration or  
16 management of assets, including the power of a fiduciary to sell,  
17 lease, or mortgage property, and the power of a fiduciary to  
18 determine principal and income;
- 19        3. A power to appoint a fiduciary;
- 20        4. A discretionary power of a trustee to distribute principal  
21 before termination of a trust to a beneficiary having an  
22 indefeasibly vested interest in the income and principal;
- 23        5. A nonvested property interest held by a charity, government,  
24 or governmental agency or subdivision, if the nonvested property

1 interest is preceded by an interest held by another charity,  
2 government, or governmental agency or subdivision;

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

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

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

20 A. Except as extended by subsection B of this section, the  
21 Statutory Rule Against Perpetuities Act applies to a nonvested  
22 property interest or a power of appointment that is created or  
23 modified on or after November 1, 2013. For purposes of this  
24 section, a nonvested property interest or a power of appointment

1 created by the exercise of a power of appointment is created when  
2 the power is irrevocably exercised or when a revocable exercise  
3 becomes irrevocable.

4 B. If a nonvested property interest or a power of appointment  
5 was created before November 1, 2013, and is determined in a judicial  
6 proceeding, commenced on or after November 1, 2013, to violate this  
7 state's rule against perpetuities as that rule existed before  
8 November 1, 2013, a court upon the petition of an interested person  
9 may reform the disposition in the manner that most closely  
10 approximates the transferor's manifested plan of distribution and is  
11 within the limits of the rule against perpetuities applicable when  
12 the nonvested property interest or power of appointment was created.

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

16 The provisions of the Statutory Rule Against Perpetuities Act  
17 shall not apply when property is given, granted, bequeathed, or  
18 devised to:

- 19 1. A charitable use;
- 20 2. Literary, educational, scientific, religious, or charitable  
21 corporations for their sole use and benefit;
- 22 3. Any cemetery corporation, society or association;
- 23 4. The Department of Mental Health and Substance Abuse  
24 Services; or

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

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

6           Section 31. The absolute power of alienation shall not be  
7 suspended, by any limitation or condition whatever, for a longer  
8 period than ~~during the continuance of the lives of persons in being~~  
9 ~~at the creation of the limitation or condition plus twenty-one (21)~~  
10 ~~years~~ allowed by the Statutory Rule Against Perpetuities Act, except  
11 as provided in Section 34 of ~~Title 60 of the Oklahoma Statutes~~ this  
12 title.

13           SECTION 9.           AMENDATORY           60 O.S. 2011, Section 172, is  
14 amended to read as follows:

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

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

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

18 SECTION 11. This act shall become effective November 1, 2013.  
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20 54-1-5657 SD 12/19/12  
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