

1 ENGROSSED HOUSE
2 BILL NO. 3534

By: Caldwell of the House

3 and

4 McCortney of the Senate
5
6

7 An Act relating to wills and succession; creating a
8 rebuttable presumption that certain transfers are
9 void; providing exceptions; providing for attorney
10 fees and costs; specifying no independent duty
11 imposed; providing applicability for instruments
12 executed after certain date; defining terms;
13 providing for codification; and providing an
14 effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 241 of Title 84, unless there is
18 created a duplication in numbering, reads as follows:

19 A. In any civil action in which a transfer instrument is being
20 challenged, there is a rebuttable presumption, except as provided in
21 subsection B of this section, that the transfer instrument is void
22 if the transferee is a caregiver and the fair market value of the
23 transferred property exceeds Twenty Thousand Dollars (\$20,000.00).

24 B. The rebuttable presumption established by subsection A of
this section can be overcome if the transferee proves to the court
either:

1 1. By a preponderance of evidence that the transferee's share
2 under the transfer instrument is not greater than the share the
3 transferee was entitled to under the transferor's transfer
4 instrument in effect prior to the transferee becoming a caregiver;
5 or

6 2. By clear and convincing evidence that the transfer was not
7 the product of fraud, duress or undue influence.

8 C. If the caregiver attempts and fails to overcome the
9 presumption under subsection B of this section, the caregiver shall
10 bear the costs of the proceedings, including, without limitation,
11 reasonable attorney fees.

12 D. The rebuttable presumption set forth in subsection A of this
13 section applies only in a civil action in which a transfer
14 instrument is being challenged, and does not create or impose an
15 independent duty on any financial institution, trust company,
16 trustee, or similar entity or person related to any transfer
17 instrument.

18 E. This section applies only to transfer instruments executed
19 after November 1, 2018.

20 F. As used in this section:

21 1. "Caregiver" means a person who voluntarily, or in exchange
22 for compensation, has assumed responsibility for all or a portion of
23 the care of another adult who needs assistance with activities of
24 daily living. Caregiver does not include:

1 a. a family member of the person receiving assistance,
2 nor

3 b. a person who provided assistance without compensation
4 if the person had a personal relationship with the
5 adult receiving assistance:

6 (1) at least ninety (90) days before providing
7 assistance,

8 (2) at least six (6) months before the death of the
9 adult receiving assistance, and

10 (3) before the adult was admitted to hospice care, if
11 the dependent adult was admitted to hospice care;

12 2. "Family member" means a spouse, child, grandchild, sibling,
13 aunt, uncle, niece, nephew, first cousin or parent of the person
14 receiving assistance;

15 3. "Transfer instrument" means the legal document intended to
16 effectuate a transfer effective on or after the transferor's death
17 and includes, without limitation, a will, trust, deed, form
18 designated as payable on death, contract or other beneficiary
19 designation form;

20 4. "Transferee" means a legatee, a beneficiary of a trust, a
21 grantee of a deed or any other person designated in a transfer
22 instrument to receive a nonprobate transfer; and
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5. "Transferor" means a testator, settlor, grantor of a deed or a decedent whose interest is transferred pursuant to a nonprobate transfer.

SECTION 2. This act shall become effective November 1, 2018.

Passed the House of Representatives the 14th day of March, 2018.

Presiding Officer of the House
of Representatives

Passed the Senate the ____ day of _____, 2018.

Presiding Officer of the Senate