

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 HOUSE BILL 3534

 By: Caldwell

7 AS INTRODUCED

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

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

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

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

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

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

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

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

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

21 E. This section applies only to transfer instruments executed
22 after November 1, 2018.

23 F. As used in this section:
24

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

5 a. a family member of the person receiving assistance,
6 nor

7 b. a person who provided assistance without compensation
8 if the person had a personal relationship with the
9 adult receiving assistance:

10 (1) at least ninety (90) days before providing
11 assistance,

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

14 (3) before the adult was admitted to hospice care, if
15 the dependent adult was admitted to hospice care;

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

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

1 4. "Transferee" means a legatee, a beneficiary of a trust, a
2 grantee of a deed or any other person designated in a transfer
3 instrument to receive a nonprobate transfer; and

4 5. "Transferor" means a testator, settlor, grantor of a deed or
5 a decedent whose interest is transferred pursuant to a nonprobate
6 transfer.

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

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9 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/28/2018 - DO
10 PASS.

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