

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3534

By: Caldwell

6 AS INTRODUCED

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.

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

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

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

22 B. The rebuttable presumption established by subsection A of  
23 this section can be overcome if the transferee proves to the court  
24 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  
23  
24

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

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

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