

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 58th Legislature (2022)

4   HOUSE BILL 3449

                              By: O'Donnell of the House

5   and

6   **Daniels** of the Senate

7                               AS INTRODUCED

8           An Act relating to trusts; amending 60 O.S. 2021,  
9           Section 175.23, which relates to district courts'  
10          jurisdiction to construe trust instruments; providing  
11          that courts shall have the ability to modify or  
12          terminate trusts created on or after November 1,  
            2022, for excessive administrative costs and for  
            failure of trust purpose; providing guidance to  
            courts modifying or terminating trusts; and providing  
            an effective date.

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

15           SECTION 1.        AMENDATORY        60 O.S. 2021, Section 175.23, is  
16   amended to read as follows:

17           Section 175.23   A.   The district court shall have original  
18   jurisdiction to construe the provisions of any trust instrument; to  
19   determine the law applicable thereto; the powers, duties, and  
20   liability of trustee; the existence or nonexistence of facts  
21   affecting the administration of the trust estate; to require  
22   accounting by trustees; to surcharge trustee; and in its discretion  
23   to supervise the administration of trusts; and all actions hereunder  
24   are declared to be proceedings in rem.

1       B. The venue of such actions shall be in the county where the  
2 trustees or any cotrustee resides. Upon obtaining jurisdiction the  
3 same shall not be divested by the removal of the trustee from the  
4 county where the action is commenced.

5       C. Actions hereunder may be brought by a trustee, beneficiary,  
6 or any person affected by the administration of the trust estate.  
7 If the action is predicated upon any act or obligation of any  
8 beneficiary, the beneficiary shall be a necessary party to the  
9 proceedings. The only necessary parties to such actions shall be  
10 those persons designated as beneficiaries by name or class in the  
11 instrument creating the trust and who have a vested interest in the  
12 trust which is the subject of the action, those persons currently  
13 serving as trustees of the trust, and any persons who may be  
14 actually receiving distributions from the trust estate at the time  
15 the action is filed. Contingent beneficiaries designated by name or  
16 class shall not be necessary parties.

17       D. The provisions of the statutes governing civil procedure,  
18 commencement of action, process, process by publication, appointment  
19 of guardians ad litem, supersedeas and appeal, shall govern all  
20 actions and proceedings brought under provisions of this act.

21       E. A court of competent jurisdiction may, for cause shown and  
22 upon notice to the beneficiaries, relieve a trustee from any or all  
23 of the duties and restrictions which would otherwise be placed upon  
24 the trustee by this act, or wholly or partly excuse a trustee who

1 has acted honestly and reasonably from liability for violations of  
2 the provisions of this act.

3 F. For trusts created on or after November 1, 2022, a court,  
4 upon application of a trustee or any qualified beneficiary, may:

5 1. Modify or terminate a trust or remove the trustee and  
6 appoint a different trustee if the court determines that the value  
7 of the trust property is insufficient to justify the cost of  
8 administration.

9 Upon termination of a trust under this paragraph, the trustee  
10 shall distribute the trust property in a manner consistent with the  
11 purposes of the trust. The trustee may enter into agreements or  
12 make such other provisions that the trustee deems necessary or  
13 appropriate to protect the interests of the beneficiaries and the  
14 trustee and to carry out the intent and purposes of the trust.

15 In the event of a dispute between a trustee or a beneficiary of  
16 a trust, the court may determine the ultimate disposition of the  
17 assets remaining in the trust.

18 This paragraph does not apply to an easement for conservation or  
19 preservation; and

20 2. Modify the terms of an irrevocable trust if:

21 a. the purposes of the trust have been fulfilled or have  
22 become illegal, impossible, wasteful, or impracticable  
23 to fulfill,

- 1           b. because of circumstances not anticipated by the  
2           settlor, compliance with the terms of the trust would  
3           defeat or substantially impair the accomplishment of a  
4           material purpose of the trust, or  
5           c. a material purpose of the trust no longer exists.

6           G. In modifying or terminating a trust under subsection F of  
7 this section, a court may:

8           1. Amend or change the terms of the trust, including terms  
9 governing distribution of the trust income or principal or terms  
10 governing administration of the trust;

11           2. Terminate the trust in whole or in part;

12           3. Direct or permit the trustee to perform acts that are not  
13 authorized or that are prohibited by the terms of the trust; or

14           4. Prohibit the trustee from performing acts that are permitted  
15 or required by the terms of the trust.

16           In exercising discretion to modify a trust under subsection F of  
17 this section, the court shall consider the terms and purposes of the  
18 trust, the facts and circumstances surrounding the creation of the  
19 trust, and extrinsic evidence relevant to the proposed modification.

20           SECTION 2. This act shall become effective November 1, 2022.

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22           COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 03/03/2022 - DO PASS,  
23           As Coauthored.