

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2391

BY: MAXEY

AS INTRODUCED

AN ACT RELATING TO INCAPACITATED PERSONS; AMENDING 6 O.S. 1991, SECTIONS 1001 AND 1017, WHICH RELATE TO POWERS AND DUTIES OF BANKS AND CORPORATE TRUST COMPANIES; AMENDING 15 O.S. 1991, SECTION 16, WHICH RELATES TO CONTRACTS AND PERSONS WITH UNSOUND MINDS; AMENDING 21 O.S. 1991, SECTIONS 152, WHICH RELATES TO PERSONS INCAPABLE OF COMMITTING CRIMES, 643, WHICH RELATES TO ACTS USED AGAINST ANOTHER, AND 833, WHICH RELATES TO CERTAIN KEEPERS AND JAILERS; AMENDING 22 O.S. 1991, SECTION 925, WHICH RELATES TO INSANITY; AMENDING 44 O.S. 1991, SECTION 3038, WHICH RELATES TO MILITARY SERVICE; AMENDING 54 O.S. 1991, SECTION 232, WHICH RELATES TO PARTNERSHIPS; AMENDING 56 O.S. 1991, SECTION 45, WHICH RELATES TO POWERS OF COUNTY COMMISSIONERS; AMENDING 58 O.S. 1991, SECTION 220, WHICH RELATES TO PROBATE PROCEDURE; AMENDING 68 O.S. 1991, SECTION 3113, WHICH RELATES TO TAX LIENS; REMOVING CERTAIN ANTIQUATED AND OUTDATED LANGUAGE; ADDING NEW TERMINOLOGY; CLARIFYING LANGUAGE; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 1001, is amended to read as follows:

Section 1001. A. All corporate trust companies now existing or hereafter created shall have the following powers:

(1) To receive deposits of trust moneys; to receive upon deposit for safekeeping personal property of every description; to guarantee special deposits; and to own or control safety vaults and rent the boxes therein.

(2) To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or any corporation, and act as assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform such duties of every description as may be committed or transferred to them by order, judgment or decree of any of the courts of record of this state or of any state or of the United States.

(3) To take, accept and hold by the order, judgment or decree of any court of this state, or of any state or territory of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal property in trust, and to execute and perform any and all such legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest, and to execute as principal or surety, and to guarantee against loss any principal or surety upon any bond or bonds required by law to be given in any proceeding in law or equity in any of the courts of this state or of any state or of the United States.

(4) To act as agent or attorney-in-fact for any person or corporation in the management and control of real or personal property and the sale or conveyance of the same, and for the investment of money, and to act for and represent corporations or persons under power and letters of attorney, and as agents for persons and corporations for the purpose of issuing, registering, transferring or countersigning the certificates of stock, bonds or other evidences of debt of any corporation, association, municipality, state or public authority, on such terms as may be agreed upon.

(5) To accept from and execute trusts for any married persons in respect to their separate property, whether real or personal, and act as agent for them in the management of such property, and generally to have and exercise such powers as are usually had and exercised by trust companies.

(6) To act as executor under last will or at the instance of any person entitled to any administration or guardianship of any estate, as administrator of the estate of any deceased person, or as guardian or curator of any ~~infant~~ minor, ~~insane person, idiot or habitual drunkard~~ incapacitated or partially incapacitated person, as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes, or trustee for any convict in the penitentiary under the appointment of any court of record having jurisdiction of the person or estate of such deceased person, ~~infant, insane person, idiot, habitual drunkard~~ minor, incapacitated or partially incapacitated person, or convict.

(7) To guarantee the fidelity and diligent performance of their duty of persons or corporations holding places of public or private trust, to guarantee or become surety on any bond given by any person or corporation and to reinsure or guarantee any person or corporation against loss or damage by reason of any risk assumed by insuring the fidelity or diligent performance of duty of any such

person or corporation, or by guaranteeing or becoming surety on any bond; and to guarantee the principal or interest, or both, of any securities of any kind.

(8) To loan money upon real estate and collateral security, and execute and issue its notes payable at a future date, and to pledge its mortgages on real estate and other securities as security therefor, which notes may be issued to an amount not exceeding, in the aggregate, ten times the amount paid up on the capital stock of the company issuing the same, and shall in no case exceed the amount of the first mortgages pledged to secure their payment.

(9) To buy and sell the bonds and warrants of this state, and all other kinds of government, state or municipal bonds; and to buy and sell all kinds of negotiable and nonnegotiable paper, stocks and other investment securities.

(10) To act as fiscal agent of the United States, or any state, municipality, body politic or corporation, and in such capacity to receive and disburse money, credits, securities and effects.

(11) To act as trustee under trusts created by will or by declaration of trust.

(12) To act as guardian for any number of persons.

(13) To transfer, register and countersign certificates of stock, bonds, or other evidence of indebtedness, and to act as agent of any corporation, foreign or domestic, for any purpose now or hereafter required by statute or otherwise.

(14) To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, and to accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

(15) To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided

to it by any court of record, or by any person, corporation, municipal or other authority, and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

(16) To be appointed and accept the appointment of assignee or trustee under any assignment for the benefit of creditors of any debtor made pursuant to any statute or otherwise.

(17) To collect coupons on or interest upon all manner of securities when authorized so to do by the parties depositing the same.

(18) To receive and manage any sinking fund of any corporation upon such terms as may be agreed upon between said corporations and those dealing with it.

(19) Generally to execute trusts of every description and escrow agreements and to act and serve in any and all fiduciary capacities not inconsistent with the laws of this state or of the United States.

(20) To prepare, make and certify abstracts of title to real and personal property and to procure and furnish information in relation thereto, where not otherwise inconsistent with the laws of this state; to guarantee or insure the title to real and personal property to persons interested in such property or in mortgages thereon, against loss, by reason of defective title or other encumbrances of or upon such property, and to make determination of title in connection with the issuance of such guaranties or insurance.

(21) To discount and negotiate promissory notes, drafts, bills of exchange and other evidence of debt, buy and sell coin and bullion, to accept for payment at a future date drafts drawn upon it by its customers, and to issue letters of credit, authorizing the holders thereof to draw drafts upon it or upon its correspondents at sight or on time not exceeding one (1) year; provided, that no trust

company shall incur liabilities under this subdivision to an amount equal at any time in the aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with the approval of the Bank Commissioner under such general regulations as to amount of acceptances as the Commissioner may prescribe.

(22) To issue debentures, notes, or other evidences of debt in the manner in which business corporations are authorized to do so and for any legal application of proceeds, but only to the extent of an amount equal to ten times its capital and surplus.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 1017, is amended to read as follows:

Section 1017. A. Banks. Any bank desiring to surrender its right to exercise the powers granted under this article in order to relieve itself of the necessity of complying with the requirements of this article, or to have returned to it any securities which it deposited with the Commissioner, may file with the Commissioner a certified copy of a resolution of its board of directors signifying such desire. Upon receipt of such resolution, the Commissioner, after satisfying himself that such bank has been relieved in accordance with state law of all duties as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of ~~lunatics~~ incapacitated or partially incapacitated persons, as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes or other fiduciary, under court, private or other appointment previously accepted under authority of this article, may, in his discretion, issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this article. Upon the issuance of such a certificate by the Commissioner, such bank (1) shall no longer be subject to the provisions of this article or the regulations of the Board made pursuant thereto, (2) shall be entitled to have returned to it any securities which it

deposited with the Commissioner, and (3) shall not exercise thereafter any of the powers granted by this article without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this Code.

B. Trust companies. Any trust company desiring to retire from business specified in this article shall furnish to the Commissioner satisfactory evidence of its release and discharge from all obligations and trusts provided for in this article. The Commissioner shall thereupon examine, or cause to be examined, such trust company, and, if he is satisfied after such examination that such trust company has discharged all its obligations and trusts, he shall revoke its certificate of authority and deliver up all securities on deposit with him.

SECTION 3. AMENDATORY 15 O.S. 1991, Section 16, is amended to read as follows:

Section 16. Persons of unsound mind within the meaning of this chapter are ~~idiots, lunatics, and imbeciles~~ incapacitated persons as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 152, is amended to read as follows:

Section 152. All persons are capable of committing crimes, except those belonging to the following classes:

1. Children under the age of seven (7) years.

2. Children over the age of seven (7) years, but under the age of fourteen (14) years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness.

3. ~~Idiots.~~

4. ~~Lunatics, insane persons, and all persons of unsound mind, including~~ Incapacitated persons as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes and persons temporarily

or partially deprived of reason, upon proof that at the time of committing the act charged against them ~~they,~~ such persons were incapable of knowing its wrongfulness.

~~5.~~ 4. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation.

~~6.~~ 5. Persons who committed the act charged without being conscious thereof.

~~7.~~ 6. Persons who committed the act, or make the omission charged, while under involuntary subjection to the power of superiors.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 643, is amended to read as follows:

Section 643. To use or to attempt to offer to use force or violence upon or toward the person of another is not unlawful in the following cases:

1. When necessarily committed by a public officer in the performance of any legal duty, or by any other person assisting him or acting by his direction.

2. When necessarily committed by any person in arresting one who has committed any felony, and delivering him to a public officer competent to receive him in custody.

3. When committed either by the party about to be injured, or by any other person in his aid or defense, in preventing or attempting to prevent an offense against his person, or any trespass or other unlawful interference with real or personal property in his lawful possession; provided the force or violence used is not more than sufficient to prevent such offense.

4. When committed by a parent or the authorized agent of any parent, or by any guardian, master or teacher, in the exercise of a lawful authority to restrain or correct his child, ward, apprentice

or scholar, provided restraint or correction has been rendered necessary by the misconduct of such child, ward, apprentice or scholar, or by his refusal to obey the lawful command of such parent or authorized agent or guardian, master or teacher, and the force or violence used is reasonable in manner and moderate in degree.

5. When committed by a carrier of passengers, or the authorized agents or servants of such carrier, or by any person assisting them at their request, in expelling from any carriage, railroad car, vessel or other vehicle, any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers, if such vehicle has first been stopped and the force and violence used is not more than is sufficient to expel the offending passenger, with a reasonable regard to his personal safety.

6. When committed by any person in preventing an ~~idiot,~~ ~~lunatic, insane person or other person of unsound mind, including persons~~ incapacitated person as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes or person temporarily or partially deprived of reason, from committing an act dangerous to himself or to another, or enforcing such restraint as is necessary for the protection of his person or for his restoration to health, during such period only as shall be necessary to obtain legal authority for the restraint or custody of his person.

SECTION 6. AMENDATORY 21 O.S. 1991, Section 833, is amended to read as follows:

Section 833. Every overseer of the poor, constable, keeper of a jail, or other person who confines any ~~idiot, lunatic, or insane~~ incapacitated person, as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes in any other manner or in any other place than is authorized by law, is guilty of a misdemeanor.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 925, is amended to read as follows:

Section 925. When it is contended on behalf of the defendant in any criminal prosecution that he is at the time of the trial a ~~lunatic, an insane person, or a~~ an incapacitated person of unsound mind, as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes, the court shall submit to the jury a proper form of verdict, and if the jury finds the defendant not guilty on account of such ~~lunacy, insanity or unsoundness of mind~~ incapacity, they shall so state in their verdict, and the court shall thereupon order the defendant committed to the state ~~hospital for the insane psychiatric facility~~, or other state institution provided for the care and treatment of cases such as the one before the court, until the ~~sanity and soundness of mind~~ competency of the defendant be judicially determined, and he be discharged from said facility or institution according to law.

SECTION 8. AMENDATORY 44 O.S. 1991, Section 3038, is amended to read as follows:

Section 3038. Any person subject to this code who for the purpose of avoiding work, duty, or service in the state military forces:

(1) feigns illness, physical disablement, mental lapse or ~~derangement~~ mental illness as defined by Section 1-103 of Title 43A of the Oklahoma Statutes; or

(2) intentionally inflicts self-injury;  
shall be punished as a court-martial may direct.

SECTION 9. AMENDATORY 54 O.S. 1991, Section 232, is amended to read as follows:

Section 232. (1) On application by or for a partner the court shall decree a dissolution whenever:

- (a) A partner has been declared ~~a lunatic~~ incapacitated as such term is defined by Section 1-111 of Title 30 of the Oklahoma Statutes in any judicial proceeding or is shown to be of unsound mind,

- (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
- (c) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
- (d) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
- (e) The business of the partnership can only be carried on at a loss,
- (f) Other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under Sections 27 and 28 of this title:

- (a) After the termination of the specified term or particular undertaking,
- (b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

SECTION 10. AMENDATORY 56 O.S. 1991, Section 45, is amended to read as follows:

Section 45. The board of county commissioners, may in their discretion, allow and pay to poor persons who may become chargeable as paupers, and who are of mature years, and sound mind, and who from their general character will probably be benefited thereby, and also the parents of ~~idiots~~ incapacitated or partially incapacitated persons as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes and of children otherwise helpless, requiring the attention of their parents, and who are unable to provide for said children themselves, such annual allowance as will not exceed the charge of their maintenance in the ordinary mode, the said board

taking the usual amount of charges in like cases as the rule for making such allowance.

SECTION 11. AMENDATORY 58 O.S. 1991, Section 220, is amended to read as follows:

Section 220. In case any one of several executors or administrators, to whom letters are granted, dies, becomes ~~lunatic~~ incapacitated, is convicted of an infamous crime, or otherwise becomes incapable of executing the trust, or in case the letters testamentary or of administration are revoked or annulled, with respect to any one executor or administrator, the remaining executor or administrator ~~must~~ shall proceed to complete the execution of the will or administration.

SECTION 12. AMENDATORY 68 O.S. 1991, Section 3113, is amended to read as follows:

Section 3113. The owner of any real estate sold for taxes, or any person having a legal or equitable interest therein, may redeem the same from the lien resulting from tax sale at any time before the execution of a deed of conveyance therefor by the county treasurer, by paying to the county treasurer, if the tax sale certificate is held by an individual purchaser, the sum paid to the county for such certificate and all taxes paid and endorsed thereon, together with interest thereon at the rate of eight percent (8%) per annum from the date of sale or purchase thereof from the county, and interest at the rate of eight percent (8%) per annum on taxes endorsed on such certificate from the date of each such endorsement, and in addition thereto costs provided in this article, for the use of the owner of the certificate of such sale, and the county treasurer shall hold the money paid to the order of such certificate owner, his agent, or attorney; and if the county is the holder of such tax lien, by paying to the county treasurer the sum for which said property was sold with penalty at the rate of twelve percent (12%) per annum and such additional costs as may have accrued;

provided, that ~~infants~~ minors, ~~idiots~~ and ~~insane~~ incapacitated persons as such terms are defined by Section 1-111 of Title 30 of the Oklahoma Statutes may redeem from taxes any real property belonging to them within one (1) year after the expiration of such disability, with interest and penalty at not more than ten percent (10%) per annum. Upon such redemption, the county treasurer shall enter the same upon the sales record, giving a receipt therefor to the person redeeming, file the duplicate with the county clerk, and retain the triplicate in his office.

SECTION 13. This act shall become effective September 1, 1992.

43-2-7830

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