

By: Henry of the Senate  
and  
Toure of the House

An Act relating to securities; amending 6 O.S. 1991, Section 1023, which relates to deposit of securities in clearing corporation or Federal Reserve Bank; amending 18 O.S. 1991, Section 1037, which relates to partly paid shares of corporate stock; amending 36 O.S. 1991, Section 1628, which relates to insurance company investments; updating statutory references; amending Section 10, Chapter 208, O.S.L. 1994 (71 O.S. Supp. 1998, Section 910), which relates to transfers on death; defining term; providing for liability for certain claims; providing for certain proceedings; establishing priorities; providing for time limitations to commence such proceedings; and providing an effective date.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 1023, is amended to read as follows:

Section 1023. A. Notwithstanding any other provisions of law, any bank, trust company, or national banking association holding securities in its fiduciary capacity, any bank, trust company, or national banking association holding securities as custodian or managing agent, and any bank, trust company, or national banking association holding securities as custodian for a fiduciary ~~pursuant to 12A O.S. 1971, Section 8-102(5),~~ is authorized to deposit or arrange for the deposit of ~~such~~ securities in a clearing corporation, ~~(as defined in Article 8 of the Uniform Commercial Code)~~ paragraph (5) of subsection (a) of Section 8-102 of Title 12A of the Oklahoma Statutes, or where the securities are those of the Unites States of America, to deposit or arrange for the deposit of ~~such~~ the securities at the Federal Reserve Bank under ~~such~~ regulations ~~as are~~ prescribed from time to time by the Comptroller

of the Currency. When ~~such~~ securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of ~~such~~ the clearing corporation with any other securities deposited in ~~such~~ the clearing corporation by any person regardless of the ownership of ~~such~~ the securities, and certificates of small denominations may be merged into one or more certificates of larger denomination. The records of ~~such~~ the fiduciary and the records of ~~such~~ the bank, trust company, or national banking association acting as custodian, managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities ~~are so~~ have been deposited. Ownership of, and other interest in, ~~such~~ the securities may be transferred by bookkeeping entry on the books of ~~such~~ the clearing corporation without physical delivery of certificates representing ~~such~~ the securities. A bank, trust company, or national banking association ~~so depositing~~ which deposits securities pursuant to this section shall be subject to such rules and regulations as, in the case of a state chartered ~~institutions~~ institution, the Commissioner and, in the case of a national banking association, the Comptroller of the Currency, may from time to time issue. A bank, trust company, or national banking association acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities ~~so~~ deposited by ~~such~~ the bank, trust company, or national banking association in ~~such~~ the clearing corporation for the account of ~~such~~ the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of ~~such~~ the fiduciary's account or on demand by the attorney for ~~such~~ the party, certify in writing to ~~such~~ the party the securities deposited by ~~such~~ the fiduciary in ~~such~~ the clearing corporation for its account as ~~such~~ the fiduciary.

B. This section shall apply to any fiduciary holding securities in its fiduciary capacity, and any bank, trust company, or national banking association holding securities as a custodian, managing agent, or custodian for a fiduciary, acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not ~~such~~ the fiduciary, custodian, managing agent, or custodian for a fiduciary, owns capital stock of ~~such~~ the clearing corporation.

SECTION 2. AMENDATORY 18 O.S. 1991, Section 1037, is amended to read as follows:

Section 1037.

#### PARTLY PAID SHARES

Any corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any ~~such~~ partly paid shares, or upon the books and records of the corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated and the corporation shall comply with applicable provisions of Section ~~8-103~~ 8-209 of Title 12A of the Oklahoma Statutes. Upon the declaration of any dividend on fully paid shares, the corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

SECTION 3. AMENDATORY 36 O.S. 1991, Section 1628, is amended to read as follows:

Section 1628. A. As used in this section:

1. "Agent" shall mean a national bank, state bank, or trust company which maintains an account in its name in a clearing corporation or which is a member of the Federal Reserve System and

through which a custodian participates in a clearing corporation or the Federal Reserve book-entry system, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "agent" may, with the prior approval of the Commissioner, include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such law to accept custody of securities;

2. "Clearing corporation" shall mean a corporation as defined in paragraph (5) of subsection ~~(4)~~ (a) of Section 8-102 of Title 12A of the Oklahoma Statutes which is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation which is organized or existing under the laws of any foreign country and which is legally qualified under such laws to effect transactions in securities by computerized book-entry. Such corporations shall have been approved for use by the Commissioner;

3. "Commissioner" shall mean the Insurance Commissioner of the State of Oklahoma or ~~his~~ an authorized representative;

4. "Custodian" shall mean a national bank, state bank, or trust company which has at all times aggregate capital, surplus, and undivided profits of not less than Five Hundred Thousand Dollars (\$500,000.00) and which is regulated by either state banking laws or is a member of the Federal Reserve System and which is legally qualified to accept custody of securities in accordance with the standards set forth below, except that with respect to securities

issued by institutions organized or existing under the laws of any foreign country, or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "custodian" may include a bank, trust company, or similar institution which has at all times aggregate capital, surplus, and undivided profits of not less than the equivalent of Five Hundred Thousand Dollars (\$500,000.00) and which is legally qualified to accept custody of securities;

5. "Federal Reserve book-entry system" shall mean the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and ~~such~~ the agencies and instrumentalities, respectively, in Federal Reserve Banks through banks which are members of the Federal Reserve System or which otherwise have access to ~~such~~ the computerized systems; and

6. "Securities" shall mean certificated securities and uncertificated securities as defined in paragraphs ~~(a)~~ (4) and ~~(b)~~ (18) of subsection ~~(1)~~ (a) of Section 8-102 of Title 12A of the Oklahoma Statutes.

B. 1. a. Notwithstanding any other provision of law, a domestic insurance company may deposit or arrange for the deposit of securities held in or purchased for its general account and its separate accounts in a clearing corporation or the Federal Reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of ~~such~~ the clearing corporation with any other securities deposited with ~~such~~ the clearing corporation by any person, regardless of the ownership of ~~such~~ the

securities, and certificates representing securities of small denominations may be merged into one or more certificates of larger denominations. The records of any agent through which an insurance company holds securities in the Federal Reserve book-entry system, and the records of any custodian banks through which an insurance company holds securities in a clearing corporation, shall at all times show that ~~such~~ the securities are held for ~~such~~ the insurance company and for which accounts thereof.

b. Ownership of, and other interests in, ~~such~~ the securities may be transferred by bookkeeping entry on the books of ~~such~~ the clearing corporation or in the Federal Reserve book-entry system without, in either case, physical delivery of certificates representing such securities; and

2. Notwithstanding any other provision of law, securities eligible for deposit under the Oklahoma Insurance Code ~~of this state~~ relating to deposit of securities by an insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the Federal Reserve book-entry system and used to meet the deposit requirements under the Oklahoma Insurance Code ~~of this state~~ and shall be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner. Any insurance company holding ~~such~~ securities in ~~such~~ this manner shall provide to the Commissioner evidence issued by its custodian or an agent through which ~~such~~ the insurance company has deposited securities with a clearing corporation or held in the Federal Reserve book-entry system, respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or agent and evidence that the records of

the custodian or agent reflect that ~~such~~ the securities are held subject to the order of the Commissioner.

C. 1. An insurance company may, by written agreement with a custodian, provide for the custody of its securities with a custodian, which securities may be held by the custodian or its agent or in a clearing corporation or in the Federal Reserve book-entry system. Securities so held, whether held by the custodian or its agent or in a clearing corporation or in the Federal Reserve book-entry system, are referred to herein as "custodied securities";

2. Any such agreement shall be in writing and shall be authorized by a resolution of the board of directors of the insurance company or of an authorized committee thereof. The terms of the agreement shall comply with the following:

- a. certified securities held by the custodian shall be held either separate from the securities of the custodian and of all of its other customers or in a fungible bulk of securities as part of a Filing of Securities by Issue (FOSBI) arrangement,
- b. securities held in a fungible bulk by the custodian and securities in a clearing corporation or in the Federal Reserve book-entry system shall be separately identified on the custodian's official records as being owned by the insurance company. ~~Said~~ The records shall identify which custodied securities are held by the custodian or by its agent and which securities are in a clearing corporation or in the Federal Reserve book-entry system. If the securities are in a clearing corporation or in the Federal Reserve book-entry system, ~~said~~ the records shall also identify where the securities are and if in a clearing

- corporation, the name of the clearing corporation and if through an agent, the name of the agent,
- c. all custodied securities that are registered shall be registered in the name of the company or in the name of a nominee of the company or in the name of the custodian or its nominee or, if in a clearing corporation, in the name of the clearing corporation or its nominee,
  - d. custodied securities shall be held subject to the instructions of the insurance company and shall be withdrawable upon the demand of the insurance company, except that custodied securities used to meet the deposit requirements set forth in the Insurance Code shall, to the extent required by the Code, be under the control of the Commissioner and shall not be withdrawn by the insurance company without the approval of the Commissioner,
  - e. the custodian shall be required to send or cause to be sent to the insurance company a confirmation of all transfers of custodied securities to or from the account of the insurance company. In addition, the custodian shall be required to furnish the insurance company with reports of holdings of custodied securities at such times and containing such information as may be reasonably requested by the insurance company,
  - f. during the course of the custodian's regular business hours, any officer or employee of the insurance company, any independent accountant selected by the insurance company, and any representative of an appropriate regulatory body shall be entitled to examine, on the premises of the custodian, the

- custodian's records relating to custodied securities, but only upon furnishing the custodian with written instructions to that effect from an appropriate officer of the insurance company,
- g. the custodian and its agents shall be required to send to the insurance company
- (1) all reports which they receive from a clearing corporation or the Federal Reserve book-entry system on their respective systems of internal accounting control, and
  - (2) any reports prepared by outside auditors on the custodian's or its agents' internal accounting control of custodied securities that the insurance company may reasonably request,
- h. the custodian shall maintain records sufficient to determine and verify information relating to custodied securities that may be reported in the insurance company's annual statement and supporting schedules and information required in any audit of the financial statements of the insurance company,
- i. the custodian shall provide, upon written request from an appropriate officer of the insurance company, the appropriate affidavits, substantially in the form provided in subsections F, G and H of this section, with respect to custodied securities,
- j. the custodian shall be obligated to indemnify the insurance company for any loss of custodied securities occasioned by the negligence or dishonesty of the custodian's officers and employees, or burglary, robbery, holdup, theft or mysterious disappearance, including loss by damage or destruction,

- k. in the event that there is a loss of custodied securities for which the custodian shall be obligated to indemnify the insurance company as provided in subparagraph j of this paragraph, the custodian shall promptly replace the securities or the value thereof and the value of any loss of rights or privileges resulting from said loss of securities,
- l. the agreement may provide that the custodian will not be liable for any failure to take any action required to be taken under the agreement in the event and to the extent that the taking of such action is prevented or delayed by war (whether declared or not and including existing wars), revolution, insurrection, riot, civil commotion, act of God, accident, fire, explosion, stoppage of labor, strikes or other differences with employees, laws, regulations, orders or other acts of any governmental authority, or any other cause whatever beyond its reasonable control, and
- m. in the event that the custodian gains entry in a clearing corporation or in the Federal Reserve book-entry system through an agent, there shall be an agreement between the custodian and the agent under which the agent shall be subject to the same liability for loss of custodied securities as the custodian, provided, however, that, if the agent shall be subject to regulation under the laws of a jurisdiction which is different from the jurisdiction the laws of which regulate the custodian, the Commissioner may accept a standard of liability applicable to the agent which is different from the standard of liability applicable to the custodian.

D. A company may loan stocks or obligations held by it pursuant to the provisions of this act to a broker-dealer registered under the Securities and Exchange Act of 1934 or a member bank. The loan must be evidenced by a written agreement which provides that:

1. The loan will be fully collateralized by cash or obligations issued or guaranteed by the United States or an agency or an instrumentality thereof, and the collateral will be adjusted each business day during the term of the loan to maintain the required collateralization in the event of market value changes in the loaned securities or collateral;

2. The loan may be terminated by the company at any time, and the borrower will return the loaned stocks or obligations or their equivalent within five (5) business days after termination; and

3. The company has the right to retain the collateral or use the collateral to purchase investments equivalent to the loaned securities if the borrower defaults under the terms of the agreement and the borrower remains liable for any losses and expenses incurred by the company due to default that are not covered by the collateral.

E. An investment may consist of an individual interest in a pool of obligations or a fractional interest in a single obligation if the certificate of participation or interest or the confirmation of participation or interest in the investment shall be issued in the name of the company or the name of the custodian bank or the nominee of either and the certificate or confirmation must, if held by a custodian bank, be kept separate and apart from the investments of others so that at all times the participation may be identified as belonging solely to the company making the investment.

F. The following shall be substantially the form of custodian affidavit for use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere:

FORM A

CUSTODIAN AFFIDAVIT

(For use by a custodian bank where securities entrusted to its care have not been redeposited elsewhere.)

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that he or she is \_\_\_\_\_ of \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_ with the principal place of business at \_\_\_\_\_ (hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_ having a place of business at \_\_\_\_\_

\_\_\_\_\_ (hereinafter called the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the schedule attached hereto is a true and complete statement of securities (other than those caused to be deposited with The Depository Trust Company or like entity or a Federal Reserve Bank under the Federal Reserve book-entry procedure) which were in the custody of the bank for the account of the insurance company as of the close of business on \_\_\_\_\_; that, unless otherwise indicated on the schedule, the next maturing and all subsequent coupons were then either attached to coupon bonds or in the process of collection; and that, unless otherwise shown on the schedule, all such securities were in bearer form or in registered form in the name of the insurance company or its nominee or of the bank or its nominee, or were in the process of being registered in such form;

That the bank as custodian has the responsibility for the safekeeping of ~~such~~ the securities as that responsibility is

specifically set forth in the agreement between the bank as custodian and the insurance company; and  
That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, ~~said~~ the securities were the property of ~~said~~ the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to  
before me this \_\_\_\_\_ day  
of \_\_\_\_\_ 19\_\_

\_\_\_\_\_ (L.S.)

Vice President (or other  
authorized officer)

G. The following shall be substantially the form of custodian affidavit for use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity:

FORM B

CUSTODIAN AFFIDAVIT

(For use in instances where a custodian bank maintains securities on deposit with The Depository Trust Company or like entity.)

STATE OF \_\_\_\_\_ )

) ss

COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, being duly sworn deposes and says that he

or she is \_\_\_\_\_ of \_\_\_\_\_, a banking

corporation organized under and pursuant to the laws of the \_\_\_\_\_

with the principal place of business at \_\_\_\_\_

(hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_

with a place of business at \_\_\_\_\_ (hereinafter called

the "insurance company") pursuant to an agreement between the bank and the insurance company;

That the bank has caused certain of such securities to be deposited with \_\_\_\_\_ and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on \_\_\_\_\_, and which were so deposited on such date;

That the bank as custodian has the responsibility for the safekeeping of ~~such~~ the securities both in the possession of the bank or deposited with \_\_\_\_\_ as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, ~~said~~ the securities were the property of ~~said~~ the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to

before me this \_\_\_\_ day

of \_\_\_\_\_ 19\_\_

\_\_\_\_\_ (L.S.)

Vice President (or other  
authorized officer)

H. The following shall be substantially the form of custodian affidavit for use where ownership is evidenced by book-entry at a Federal Reserve Bank:

FORM C

CUSTODIAN AFFIDAVIT

(For use where ownership is evidenced by book-entry at a Federal Reserve Bank.)

STATE OF \_\_\_\_\_)

) ss

COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being duly sworn deposes and says that he is \_\_\_\_\_ of the \_\_\_\_\_, a banking corporation organized under and pursuant to the laws of the \_\_\_\_\_ with the principal place of business at \_\_\_\_\_ (hereinafter called the "bank"):

That his or her duties involve supervision of activities of the bank as custodian and records relating thereto;

That the bank is custodian for certain securities of \_\_\_\_\_ with a place of business at \_\_\_\_\_ (hereinafter called the "insurance company") pursuant to an agreement between the bank and the insurance company;

That it has caused certain securities to be credited to its book-entry account with the Federal Reserve Bank of \_\_\_\_\_ under the Federal Reserve book-entry procedure; and that the schedule attached hereto is a true and complete statement of the securities of the insurance company of which the bank was custodian as of the close of business on \_\_\_\_\_ which were in a "General" book-entry account maintained in the name of the bank on the books and records of the Federal Reserve Bank of \_\_\_\_\_ at ~~such~~ that date;

That the bank has the responsibility for the safekeeping of ~~such~~ the securities both in the possession of the bank or in ~~said~~ the "General" book-entry account as is specifically set forth in the agreement between the bank as custodian and the insurance company; and

That, to the best of his or her knowledge and belief, unless otherwise shown on the schedule, ~~said~~ the securities were the property of ~~said~~ the insurance company and were free of all liens, claims, or encumbrances whatsoever.

Subscribed and sworn to  
before me this \_\_\_\_ day

of \_\_\_\_\_ 19\_\_

\_\_\_\_\_ (L.S.)

Vice President (or other  
authorized officer)

SECTION 4. AMENDATORY Section 10, Chapter 208, O.S.L.  
1994 (71 O.S. Supp. 1998, Section 910), is amended to read as  
follows:

Section 910. A. In this section, "nonprobate transfer" means a transfer described in subsection B of this section by an owner whose last domicile was in this state.

B. A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this act and is not testamentary.

~~B. This act does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.~~

~~C. A registration in beneficiary form may be canceled by specific reference to the security or the securities account in the will of the sole owner or the last to die of multiple owners, but the terms of the revocation are not binding on the registering entity unless it has received written notice from any claimant to an interest in the security objecting to implementation of a registration in beneficiary form prior to the registering entity reregistering the security. If the beneficiary designation is canceled, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.~~

C. A transferee of a nonprobate transfer is subject to liability to any probate estate of the decedent for allowed claims against that estate and statutory allowances to the decedent's spouse and children to the extent the estate is insufficient to satisfy those claims and allowances. The liability of a nonprobate

transferee may not exceed the value of nonprobate transfers received by that transferee.

D. Nonprobate transferees are liable for the insufficiency described in subsection C in the following order of priority:

1. A transferee designated in the decedent's will or any other governing instrument, as provided in the instrument;

2. The trustee of a trust serving as the principal nonprobate instrument in the decedent's estate plan as shown by its designation as devisee of the decedent's residuary estate or by other facts or circumstances, to the extent of the value of the nonprobate transfer received;

3. Other nonprobate transferees, in proportion to the values received.

E. A provision made in one instrument may direct the apportionment of the liability among the nonprobate transferees taking under that or any other governing instrument. If a provision in one instrument conflicts with a provision in another, the later one prevails.

F. Upon due notice to a nonprobate transferee, the liability imposed by this section is enforceable in proceedings in this state, whether or not the transferee is located in this state.

G. A proceeding under this section may not be commenced unless the personal representative of the decedent's estate has received a written demand for the proceeding from the surviving spouse or a child, to the extent that statutory allowances are affected, or a creditor. If the personal representative declines or fails to commence a proceeding after demand, a person making demand may commence the proceeding in the name of the decedent's estate, at the expense of the person making the demand and not of the estate. A personal representative who declines in good faith to commence a requested proceeding incurs no personal liability for declining.

H. A proceeding under this section must be commenced within one (1) year after the decedent's death, but a proceeding on behalf of a creditor whose claim was allowed after proceedings challenging disallowance of the claim may be commenced within sixty (60) days after final allowance of the claim.

I. Unless a written notice asserting that a decedent's estate is insufficient to pay allowed claims and statutory allowances has been received from the decedent's personal representative, a trustee receiving a nonprobate transfer is released from liability under this section with respect to any assets distributed to the trust's beneficiaries. Each beneficiary to the extent of the distribution received becomes liable for the amount of the trustee's liability attributable to that assets received by the beneficiary.

SECTION 5. This act shall become effective November 1, 1999.

Passed the Senate the 2nd day of March, 1999.

\_\_\_\_\_  
President of the Senate

Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_ ,  
1999.

\_\_\_\_\_  
Speaker of the House of  
Representatives