

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1525

By: Williamson

AS INTRODUCED

An Act relating to property; creating the Oklahoma Nonprobate Transfer of Property Act and providing short title; defining terms; declaring that nonprobate transfers are not subject to requirements of a will; stating authority of agent; making nonprobate transfers subject to agreement of transferor; stating obligations of transferring entity upon acceptance or registration of beneficiary designation; stating effect of beneficiary designation; providing for assignments to be effective on death of owner; requiring execution and recording of deed; requiring execution and acknowledgment of instrument for transfer of personal property; providing for transfer of property to transferee; providing for registration of property in beneficiary form; providing for ownership of property in beneficiary form during lifetime of owner and upon death; providing for revocation or change or beneficiary designation by owner or agent; stating right of beneficiary to damaged property; stating effect of collateral conveyance, contract, or pledge of property subject to nonprobate transfer; requiring survival of beneficiary for certain time period; stating validity of beneficiary designation of certain trustee; providing for lineal descendant substitutes for beneficiary; providing for beneficiary disclaimer of nonprobate transfer; providing for revocation of nonprobate transfer upon dissolution or annulment of marriage; providing for disqualification of beneficiary for fraud, duress, undue influence, or murder of owner; prohibiting inclusion of omitted spouse or child; providing for rules of nonprobate transfer; stating protections and duties of transferring entity; stating rights of beneficiaries and others for improper distribution; stating creditors rights; determining scope and application of act; providing for jurisdiction of nonprobate transfer matters; construing act; providing for action for accounting for administration of estate; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1301 of Title 58, unless there is created a duplication in numbering, reads as follows:

This act may be cited as the "Oklahoma Nonprobate Transfer of Property Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1302 of Title 58, unless there is created a duplication in numbering, reads as follows:

In this Act:

1. "Beneficiary" means a person or persons designated or entitled to receive property pursuant to a nonprobate transfer after surviving one or more persons;

2. "Beneficiary designation" means a provision in writing that is not a will that designates the beneficiary of a nonprobate transfer, including the transferee in an instrument that makes the transfer effective on death of the owner, and that complies with the conditions of any governing instrument, the rules of any transferring entity, and applicable law;

3. "Death of the owner" means in the case of joint owners, the death of the last surviving owner;

4. "In proper form" applies to a beneficiary designation or a revocation or change thereof, or a request to make, revoke, or change a beneficiary designation, which complies with the terms of the governing instrument, the rules of the transferring entity, and applicable law, including any requirements with respect to supplemental documents;

5. "Joint owners" means persons who hold property as joint tenants with right of survivorship and a husband and wife who hold property as tenants by the entirety;

6. "LDPS" is an abbreviation of lineal descendants per stirpes which may be used in a beneficiary designation to designate a substitute beneficiary;

7. "Nonprobate transfer" means a transfer of property taking effect upon the death of the owner, pursuant to a beneficiary designation. A nonprobate transfer under the provisions of this act does not include survivorship rights in property held as joint tenants or tenants by the entirety, a transfer to a remainderman on termination of a life tenancy, a transfer under a trust established by an individual, either inter vivos or testamentary, a transfer pursuant to the exercise or nonexercise of a power of appointment, or a transfer made on death of a person who did not have the right to designate his or her estate as the beneficiary of the transfer;

8. "Owner" means a person or persons having a right, exercisable alone or with others, to designate the beneficiary of a nonprobate transfer, and includes joint owners;

9. "Ownership in beneficiary form" means holding property pursuant to a registration in beneficiary form or other writing that names the owner of the property followed by a transfer on death direction and the designation of a beneficiary;

10. "Person" means living individuals, entities capable of owning property, and fiduciaries;

11. "Proof of death" means a death certificate or record or report that is prima facie proof or evidence of death;

12. "Property" means any present or future interest in property, real or personal, tangible or intangible, legal or equitable. Property includes a right to direct or receive payment of a debt, money, or other benefits due under a contract, account agreement, deposit agreement, employment contract, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust or law, a right to receive performance remaining due under a contract, a right to receive payment under a promissory note or a debt maintained in a written account record, rights under a certificated or uncertificated security, rights under an instrument

evidencing ownership of property issued by a governmental agency and rights under a document of title;

13. "Registration in beneficiary form" means titling of an account record, certificate, or other written instrument evidencing ownership of property in the name of the owner followed by a transfer on death direction and the designation of a beneficiary;

14. "Transfer on death direction" includes the phrase "transfer on death to" or the phrase "pay on death to" or the abbreviation "TOD" or "POD" after the name of the owners and before the designation of the beneficiary; and

15. "Transferring entity" means a person who owes a debt or is obligated to pay money or benefits, render contract performance, deliver or convey property, or change the record of ownership of property on the books, records, and accounts of an enterprise or on a certificate or document of title that evidences property rights, and includes any governmental agency, business entity, or transfer agent that issues certificates of ownership or title to property and a person acting as a custodial agent for an owner's property.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1303 of Title 58, unless there is created a duplication in numbering, reads as follows:

Nonprobate transfers are effective with or without consideration and shall not be considered testamentary.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1304 of Title 58, unless there is created a duplication in numbering, reads as follows:

For the purpose of discharging its duties under this act, the authority of a transferring entity acting as agent for an owner of property subject to a nonprobate transfer shall not cease upon the death of the owner. The transferring entity shall transfer the property to the designated beneficiary in accordance with the

governing instrument, the rules of the transferring entity, and the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1305 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. When any of the following is required, provision for a nonprobate transfer is a matter of agreement between the owner and the transferring entity under the rules, terms, and conditions as the owner and transferring entity may agree:

1. Submission to the transferring entity of a beneficiary designation under a governing instrument;

2. Registration by a transferring entity of a transfer on death direction on any certificate or record evidencing ownership of property;

3. The consent of a contract obligor for a transfer of performance due under the contract;

4. The consent of a financial institution for a transfer of an obligation of the financial institution; or

5. The consent of a transferring entity for a transfer of an interest in the transferring entity.

B. Whenever subsection A of this section is applicable, the provisions of this act do not impose an obligation on a transferring entity to accept an owner's request to make provision for a nonprobate transfer of property.

C. When a beneficiary designation, revocation, or change is subject to acceptance by a transferring entity, the transferring entity's acceptance of the beneficiary designation, revocation, or change relates back to and is effective as of the time when the request was received by the transferring entity.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1306 of Title 58, unless there is created a duplication in numbering, reads as follows:

When a transferring entity accepts a beneficiary designation or beneficiary assignment, or registers property in beneficiary form, the acceptance or registration constitutes the agreement of the owner and transferring entity that, unless the beneficiary designation is revoked or changed prior to the owner's death, on proof of death of the owner and compliance with the transferring entity's requirements for showing proof of entitlement, the property will be transferred to and placed in the name and control of the beneficiary in accordance with the beneficiary designation or transfer on death direction, the agreement of the parties, and the provisions of this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1307 of Title 58, unless there is created a duplication in numbering, reads as follows:

A beneficiary designation, under a written instrument or law, that authorizes a transfer of property pursuant to a written designation of beneficiary, transfers the right to receive the property to the designated beneficiary who survives, effective upon the death of the owner, if the beneficiary designation is executed and delivered in proper form to the transferring entity prior to the death of the owner.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1308 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A written assignment of a contract right that assigns the right to receive any performance remaining due under the contract to an assignee designated by the owner, that expressly states that the assignment is not to take effect until the death of the owner, transfers the right to receive performance due under the contract to the designated assignee beneficiary, effective upon the death of the owner, if the assignment is executed and delivered in proper form to the contract obligor prior to the death of the owner or is executed

in proper form and acknowledged before a notary public or other person authorized to administer oaths. A beneficiary assignment need not be supported by consideration or be delivered to the assignee beneficiary.

B. This section does not preclude other methods of assignment that are permitted by law and have the effect of postponing enjoyment of a contract right until the death of the owner.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1309 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A deed that conveys an interest in real property to a grantee designated by the owner, that expressly states that the deed is not to take effect until the death of the owner, transfers the interest provided to the designated grantee beneficiary, effective upon the death of the owner, if the deed is executed and filed of record with the recorder of deeds in the city or county or counties in which the real property is situated prior to the death of the owner. A beneficiary deed need not be supported by consideration or be delivered to the grantee beneficiary. A beneficiary deed may be used to transfer an interest in real property to a trust estate regardless of the trust's revocability.

B. This section shall not preclude other methods of conveyancing that are permitted by law and have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section shall not invalidate any deed, otherwise effective by law to convey title to the interest and estates therein provided, that is not recorded until after the death of the owner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1310 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A deed of gift, bill of sale, or other writing intended to transfer an interest in tangible personal property, that expressly

states that the transfer is not to take effect until the death of the owner, transfers ownership to the designated transferee beneficiary, effective upon the death of the owner, if the instrument is in other respects sufficient to transfer the type of property involved and is executed by the owner and acknowledged before a notary public or other person authorized to administer oaths. A beneficiary transfer instrument need not be supported by consideration or be delivered to any transferee beneficiary.

B. This section shall not preclude other methods of transferring ownership of tangible personal property that are permitted by law and have the effect of postponing enjoyment of property until the death of the owner.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1311 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A transferor of property, with or without consideration, may directly transfer the property to a transferee to hold as owner in beneficiary form.

B. A transferee under an instrument described in subsection A of this section shall be the owner of the property for all purposes and shall have all the rights to the property otherwise provided by law to owners, including the right to revoke or change the beneficiary designation.

C. A direct transfer of property to a transferee to hold as owner in beneficiary form is effective when the writing perfecting the transfer becomes effective to make the transferee the owner.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1312 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Property may be held or registered in beneficiary form by including the name in which the property is held or registered a

direction to transfer the property upon the death of the owner to a beneficiary designated by the owner.

B. Property is registered in beneficiary form by showing on the account record or instrument evidencing ownership of the property the name of the owner, and the estate by which two or more joint owners hold the property, followed in substance by the words "transfer on death to _____ (name of beneficiary)". In lieu of the words "transfer on death to" the words "pay on death to" or the abbreviation "TOD" or "POD" may be used.

C. A transfer on death direction may only be placed on an account record or instrument evidencing ownership of property by the transferring entity or a person authorized by the transferring entity.

D. A transfer on death direction transfers the owner's interest in the property to the designated beneficiary, effective upon the owner's death, if the property is registered in beneficiary form prior to the death of the owner, or if the request to make the transfer on death direction is delivered in proper form to the transferring entity prior to the owner's death.

E. 1. An account record or instrument evidencing ownership of property that contains a transfer on death direction written as part of the name in which the property is held or registered, is conclusive evidence in the absence of fraud, duress, undue influence, or evidence of clerical mistake by the transferring entity that the direction was regularly made by the owner and accepted by the transferring entity, and was not revoked or changed prior to the death giving rise to the transfer.

2. The transferring entity shall have no obligation to retain the original writing, if any, by which the owner caused the property to be registered in beneficiary form, more than six (6) months after the transferring entity has mailed or delivered to the owner, at the address shown on the registration, an account statement,

certificate, or instrument that shows the manner in which the property is held or registered in beneficiary form.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1313 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Prior to the death of the owner, a beneficiary shall have no rights in the property by reason of the beneficiary designation and the signature or agreement of the beneficiary shall not be required for any transaction respecting the property.

B. Upon the death of one of two or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners, and the right of survivorship continues as between two or more surviving joint owners.

C. Upon the death of the owner, property passes by operation of law to the beneficiary.

D. If two or more beneficiaries survive, there is no right of survivorship among the beneficiaries in the event of death of a beneficiary thereafter unless the beneficiary designation expressly provides for survivorship among them, and, unless so expressly provided, surviving beneficiaries hold their separate interests in the property as tenants in common. The share of any subsequently deceased beneficiary belongs to that beneficiary's estate.

E. If no beneficiary survives the owner, the property belongs to the estate of the owner.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1314 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary designation may be revoked or changed in whole or in part during the lifetime of the owner. A revocation or change of a beneficiary designation involving property of joint owners may only be made with the agreement of all owners then living.

B. A subsequent beneficiary designation revokes a prior beneficiary designation unless the subsequent beneficiary designation expressly provides otherwise.

C. A revocation or change in a beneficiary designation shall comply with the terms of the governing instrument, the rules of the transferring entity, and the applicable law.

D. A beneficiary designation may not be revoked or changed by the provisions of a will unless the beneficiary designation expressly grants the owner the right to revoke or change a beneficiary designation by will.

E. A transfer during the owner's lifetime of the owner's interest in property, with or without consideration, terminates the beneficiary designation with respect to the property transferred.

F. The effective date of a revocation or change in a beneficiary designation shall be determined in the same manner as the effective date of a beneficiary designation.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1315 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. An attorney in fact, custodian, conservator, or other agent shall not make, revoke, or change a beneficiary designation unless the document establishing the agent's right to act, or a court order, expressly authorizes the action and the action complies with the terms of the governing instrument, the rules of the transferring entity, and applicable law.

B. This section shall not prohibit the authorized withdrawal, sale, pledge, or other present transfer of the property by an attorney in fact, custodian, conservator, or other agent notwithstanding the fact that the effect of the transaction may be to extinguish a beneficiary's right to receive a transfer of the property at the death of the owner.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1316 of Title 58, unless there is created a duplication in numbering, reads as follows:

If property subject to a beneficiary designation is lost, destroyed, damaged, or involuntarily converted during the owner's lifetime, the beneficiary succeeds to any right with respect to the loss, destruction, damage, or involuntary conversion which the owner would have had if the owner had survived, but has no interest in any payment or substitute property received by the owner during the owner's lifetime.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1317 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary of a nonprobate transfer takes the owner's interest in the property at death subject to all conveyances, assignments, contracts, setoffs, licenses, easements, liens, and security interests made by the owner or to which the owner was subject during the owner's lifetime.

B. A beneficiary of a nonprobate transfer of an account with a bank, savings and loan association, credit union, broker, or mutual fund takes the owner's interest in the property at death subject to all requests for payment of money issued by the owner prior to death, whether paid by the transferring entity before or after death, or unpaid. The beneficiary is liable to the payee of an unsatisfied request for payment, to the extent that it represents an obligation that was enforceable against the owner during the owner's lifetime. To the extent that a claim properly paid by the personal representative of the owner's estate includes the amount of an unsatisfied request for payment to the claimant, the personal representative shall be subrogated to the rights of the claimant as payee. Each beneficiary's liability with respect to an unsatisfied request for payment is limited to the same proportionate share of

the request for payment as the beneficiary's proportionate share of the account under the beneficiary designation. Beneficiaries shall have the right of contribution among themselves with respect to requests for payment which are satisfied after the owner's death, to the extent the requests for payment would have been enforceable by the payees. In no event shall a beneficiary's liability to payees, the owner's estate, and other beneficiaries under this section and Section 32 of this act with respect to all requests for payment exceed the value of the account received by the beneficiary. If a request for payment which would not have been enforceable under this section is satisfied from a beneficiary's share of the account, the beneficiary shall not be liable to any other payee or the owner's estate under this section or Section 32 of this act for the amount so paid, but the beneficiary shall have no right of contribution against other beneficiaries with respect to that amount.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1318 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. An individual who is a beneficiary of a nonprobate transfer shall not be entitled to a transfer unless the individual survives the owner by one hundred and twenty (120) hours.

B. If an owner provides and the transferring entity accepts, or if a governing instrument or applicable law provides, a period of survival different than one hundred and twenty (120) hours, the period designated shall determine the survival requirement of beneficiaries under this section. An owner and transferring entity may agree that certain circumstances raise a different presumption of survival or nonsurvival.

C. This section shall not apply to survivorship rights of joint owners.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1319 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary designation designating a trustee under a trust established or to be established by the owner or some other person, including a funded or unfunded trust, shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after the designation.

B. Unless a beneficiary designation provides otherwise, a trust that was revoked or terminated before the death of the owner shall be deemed not to have survived the owner.

C. Unless a beneficiary designation provides otherwise, a legal entity or trust that does not exist or come into existence at the time of the owner's death shall be deemed not to have survived the owner.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1320 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Whenever a person designated as beneficiary of a nonprobate transfer is a lineal descendant of the owner, and the beneficiary is deceased at the time the beneficiary designation is made or does not survive the owner, or is treated as not surviving the owner, the nonsurviving beneficiary's share shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, to take in place of and in substitution for the nonsurviving beneficiary, the same as the beneficiary would have taken if the beneficiary had survived. This subsection shall not apply to a beneficiary designation with the notation "no LDPS" after a beneficiary's name or other words negating an intention to direct the transfer to the lineal descendant substitute of a nonsurviving beneficiary.

B. A beneficiary designation may provide that the share of any beneficiary not related to the owner as provided in subsection A of

this section, and who does not survive the owner, shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, by including after the name of the beneficiary the words "and lineal descendants per stirpes" or the abbreviation "LDPS".

C. Lineal descendants, taking as substitutes for a beneficiary of a nonprobate transfer, if they are of the same degree of kinship to the nonsurviving beneficiary, share equally, but if they are of unequal degree, then those of more remote degree take the share of their parent by representation.

D. Whenever a nonprobate transfer is to be made to a beneficiary's lineal descendants per stirpes, the property shall belong to the lineal descendants of the beneficiary who survive the owner, and in the proportions, as would result if the survivors were inheriting personal property of the beneficiary under the laws of Oklahoma and the beneficiary had died at the time of the owner's death, intestate, unmarried, domiciled in Oklahoma and possessed of the property.

E. Whenever a beneficiary of a nonprobate transfer does not survive the owner and the beneficiary is a person for whom the beneficiary's surviving lineal descendants take as substitutes under subsection A or B of this section, if there are no lineal descendants of the beneficiary who survive the owner, the beneficiary's share shall belong to the surviving beneficiaries, or to the owner's estate, as would be the case if transfer to the beneficiary's lineal descendants were not required to be considered.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1321 of Title 58, unless there is created a duplication in numbering, reads as follows:

If a beneficiary of a nonprobate transfer disclaims in whole or in part the nonprobate transfer in the manner provided by law, then with respect to the disclaimed transfer, the disclaimant is treated as having predeceased the owner unless the beneficiary designation

provides otherwise; provided, the possibility that a beneficiary or descendant may disclaim a transfer shall not require any transferring entity to withhold making the transfer in the normal course of business.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1322 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. If, after an owner makes a beneficiary designation, the owner's marriage is dissolved or annulled, any provision of the beneficiary designation in favor of the owner's former spouse or a relative of the owner's former spouse is revoked on the date the marriage is dissolved or annulled, whether or not the beneficiary designation refers to marital status. The beneficiary designation shall be given effect as if the former spouse or relative of the former spouse had disclaimed the revoked provision.

B. Subsection A of this section does not apply to a provision of a beneficiary designation that has been made irrevocable, or revocable only with the spouse's consent, or that is made after the marriage was dissolved, or that expressly states that marriage dissolution shall not affect the designation of a spouse or relative of a spouse as beneficiary.

C. Any provision of a beneficiary designation revoked solely by this section is revived by the owner's remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

D. In this section, "a relative of the owner's former spouse" means an individual who is related to the owner's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the owner by blood, adoption, or affinity.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1323 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary designation or a revocation of a beneficiary designation that is procured by fraud, duress, or undue influence is void.

B. A beneficiary who willfully and unlawfully causes or participates with another in causing the death of the owner, or the insured individual under a life insurance policy or certificate, is disqualified from receiving any benefit of a nonprobate transfer from the owner or any proceeds payable as a result of the death of an individual insured under a life insurance policy or certificate. The beneficiary designation shall be given effect as if the disqualified beneficiary had disclaimed it. The fact that a beneficiary willfully and unlawfully caused or participated with another in causing the death of the owner may be established by a criminal conviction or guilty plea, after the right of direct appeal has been exhausted, or determined in a proceeding pursuant to subsection C of this section using a preponderance of the evidence standard.

C. On petition of any interested person or the transferring entity, the trier of fact shall determine whether a beneficiary designation or a revocation of a beneficiary designation is void by reason of subsection A of this section or whether subsection B of this section applies to prevent any person from receiving any benefit of the nonprobate transfer. The trier of fact may mitigate the effect of subsection A or B on any person as the trier of fact determines justice requires. Any party may demand a jury trial.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. No law intended to protect a spouse or child from unintentional disinheritance by the will of a testator shall apply to a nonprobate transfer.

B. A beneficiary designation designating the children of the owner or any other person as a class and not by name shall include all children of the person, whether born or adopted before or after the beneficiary designation is made.

C. If a beneficiary designation names an individual who is a child of the owner, and if the owner has a child born or adopted after the owner makes the beneficiary designation, the after-born or after-adopted child shall be entitled to receive a fractional share of any property otherwise transferable to any child of the owner who is named in the beneficiary designation, computed as follows: the numerator of the fraction shall be one, and the denominator shall be the total number of the owner's children, whether born or adopted before or after the beneficiary designation was made and whether named or not in the beneficiary designation. The property otherwise transferable to the owner's children named in the beneficiary designation shall be reduced in the proportion that their shares bear to each other. If there is no share designated for any child of the owner an after-born or after-adopted child shall receive no share of the property subject to the nonprobate transfer.

D. A beneficiary designation, a governing instrument, or the rules of any transferring entity may provide that the after-born child rule does not apply, in which case after-born and after-adopted children of the owner shall receive no share of property designated for named children of the owner.

E. A transferring entity shall have no obligation to apply subsection C of this section in making distribution with respect to property registered in beneficiary form. This exception for the transferring entity shall not affect the ownership interest of the after-born or after-adopted child.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1325 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The rights and obligations of the owner, beneficiary, and transferring entity shall be governed by the provisions of this act.

B. When provision for a nonprobate transfer is a matter of agreement between the owner and the transferring entity pursuant to Section 5 of this act, a transferring entity may adopt rules for the making, revocation, acceptance, and execution of beneficiary designations and a transferring entity may adopt the rules in paragraphs 1 through 14 of subsection C of this section in whole or in part by incorporation by reference.

C. The following rules in paragraphs 1 through 14 of this subsection shall apply to all beneficiary designations except as otherwise provided by any governing instrument, the rules of any transferring entity, applicable law, or the beneficiary designation:

1. A beneficiary designation or a request for registration of property in beneficiary form shall be made in writing, signed by the owner and dated;

2. A beneficiary designation may designate one or more primary beneficiaries and one or more contingent beneficiaries;

3. On property registered in beneficiary form, primary beneficiaries are the persons shown immediately following the transfer on death direction. Words indicating that the persons shown are primary beneficiaries are not required. If contingent beneficiaries are designated, their names in the registration shall be preceded by the words "contingent beneficiaries", or an abbreviation thereof, or words of similar meaning;

4. Unless a different percentage or fractional share is stated for each beneficiary, surviving multiple primary beneficiaries or multiple contingent beneficiaries share equally. When a percentage or fractional share is designated for multiple beneficiaries, either

primary or contingent, surviving beneficiaries share in the proportion that their designated shares bear to each other;

5. Provision for a transfer of unequal shares to multiple beneficiaries for property registered in beneficiary form may be expressed in the registration by a number preceding the name of each beneficiary that represents a percentage share of the property to be transferred to that beneficiary. The number representing a percentage share need not be followed by the word "percent" or a percent sign;

6. A nonprobate transfer of property also transfers any interest, rent, royalties, earnings, dividends, or credits earned or declared on the property, but not paid or credited before the owner's death;

7. If a distribution by a transferring entity pursuant to a nonprobate transfer results in fractional shares in a security or other property that is not divisible, the transferring entity may distribute the fractional shares in the name of all beneficiaries as tenants in common or as the beneficiaries may direct, or the transferring entity may sell the property, that is not divisible and distribute the proceeds to the beneficiaries in the proportions to which they are entitled;

8. Upon the death of the owner, the property, less a setoff for all amounts and charges owing by the owner to the transferring entity, shall belong to the surviving beneficiaries, and their lineal descendants when required as substitutes, as follows:

- a. if a multiple primary beneficiary does not survive and has no surviving lineal descendant substitutes, the nonsurviving primary beneficiary's share shall belong to the surviving primary beneficiaries in the proportion that their shares bear to each other,
- b. if no primary beneficiary or lineal descendant substitute survives, the property shall belong to the

surviving contingent beneficiaries in equal shares or in the percentage or fractional share stated,

- c. if a multiple contingent beneficiary does not survive and has no lineal descendant substitutes, the nonsurviving contingent beneficiary's share shall belong to the surviving contingent beneficiaries in the proportion that their shares bear to each other, and
- d. if no beneficiary survives the owner, the property shall belong to the owner's estate;

9. If a trustee designated as a beneficiary does not survive the owner, resigns, or is unable or unwilling to execute the trust as trustee, and, if within one year of the owner's death no successor trustee has been appointed or has undertaken to act, or if a trustee is designated as beneficiary and no trust instrument or probated will creating an express trust has been presented to the transferring entity, the transferring entity may in its discretion make the distribution as it would be made if the trust did not survive the owner;

10. If, within six (6) months of the owner's death, the transferring entity has not been presented evidence that a nonsurviving beneficiary for whom LDPS distribution applies had lineal descendants who survived the owner, the transferring entity may in its discretion make the transfer as if the beneficiary's descendants, if any, did not survive the owner;

11. If a beneficiary cannot be located at the time the transfer is made to located beneficiaries, the transferring entity shall hold the missing beneficiary's share. If the missing beneficiary's share is not claimed by the beneficiary or the beneficiary's personal representative or successors within one year of the owner's death, the transferring entity shall transfer the share as if the beneficiary did not survive the owner. The transferring entity

shall have no obligation to attempt to locate a missing beneficiary, to pay interest on the share held for a missing beneficiary or to invest the missing beneficiary's share in any different property. Cash, interest, rent, royalties, earnings, or dividends payable to the missing beneficiary may be held by the transferring entity at interest or reinvested by the transferring entity in the account or in a dividend reinvestment account associated with a security held for the missing beneficiary;

12. If a transferring entity is required to make a nonprobate transfer to a minor or a disabled adult the transfer may be made pursuant to the Oklahoma Uniform Transfers To Minors Act, or a similar law of another state;

13. A written request for execution of a nonprobate transfer may be made by any beneficiary, a beneficiary's legal representative or attorney in fact, or the owner's personal representative. The request shall be under oath or affirmation, subscribed before a notary public or other person authorized to administer oaths, and shall include the following:

- a. the full name, address, and tax identification number of each beneficiary,
- b. the percentage or fractional share to be distributed to each beneficiary,
- c. the manner in which percentage or fractional shares in nondivisible property or the proceeds therefrom are to be distributed,
- d. a statement that there are no known disputes as to the persons entitled to a distribution under the nonprobate transfer or the amounts to be distributed to each person, and no known claims that would affect the distribution requested, and
- e. other information as the transferring entity may require; and

14. A written request pursuant to paragraph 13 of this subsection shall be accompanied by the following:

- a. any certificate or instrument evidencing ownership of the contract, account, security, or property,
- b. proof of death of the owner and any nonsurviving beneficiary,
- c. an inheritance tax waiver from states that require it,
- d. where the request is made by a legal representative, a certified copy of the court order appointing the legal representative, and
- e. other proof of entitlement as the transferring entity may require.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1326 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The owner in making provision for a nonprobate transfer under the provisions of this act gives to the transferring entity the protections provided in this section for executing the owner's beneficiary designation.

B. The transferring entity may execute a nonprobate transfer with or without a written request.

C. The transferring entity may rely and act on:

1. A certified or authenticated copy of a death certificate issued by an official or agency of the place where the death occurred as showing the fact, place, date, time of death, and the identity of the decedent; or

2. A certified or authenticated copy of any report or record of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive and the dates, circumstances, and places disclosed by the record or report.

D. The transferring entity may rely and act on, and shall have no duty to verify, information in a written request made by a person

specified in paragraph 14 of subsection C of Section 25 of this act, under oath or affirmation, subscribed before a notary public or other person authorized to administer oaths, for execution of the beneficiary designation.

E. The transferring entity shall have no duty:

1. To give notice to any person of the date, manner, and persons to whom transfer will be made under the beneficiary designation, except as provided in subsection F of this section;

2. To attempt to locate any beneficiary or lineal descendant substitute, or determine whether a nonsurviving beneficiary or descendant had lineal descendants who survived the owner;

3. To locate a trustee or custodian, obtain appointment of a successor trustee or custodian, or discover the existence of a trust instrument or will that creates an express trust; or

4. To determine any fact or law that would cause the beneficiary designation to be revoked in whole or in part as to any person because of change in marital status or other reason, or that would qualify or disqualify any person to receive a share under the nonprobate transfer, or that would vary the distribution provided in the beneficiary designation.

F. 1. The transferring entity shall have no duty to withhold making a transfer based on knowledge of any fact or claim adverse to the transfer to be made unless, prior to the transfer, the transferring entity has received written notice at a place and time and in a manner which affords a reasonable opportunity to act on it before the transfer is made, that:

- a. asserts a claim of beneficial interest in the transfer adverse to the transfer to be made,
- b. gives the name of the claimant and an address for communications directed to the claimant,
- c. identifies the deceased owner and the property to which the claim applies, and

d. states the amount and nature of the claim as it affects the transfer.

2. If a notice as provided in paragraph 1 of this subsection is received by the transferring entity, the transferring entity may discharge any duty to the claimant by delivering a notice or sending a notice by certified mail to the claimant at the address given in the notice of claim advising that a transfer adverse to the claimant's asserted claim may be made in thirty (30) days from the date of delivery or mailing unless the transfer is restrained by a court order. If the transferring entity so delivers or mails such a notice it shall withhold making the transfer for thirty (30) days after the date of delivery or mailing and may then make the transfer unless restrained by a court order.

3. No other notice or other information shown to have been available to the transferring entity, its transfer agent and their employees, shall affect the right to the protections provided by the provisions of this act.

G. The transferring entity shall have no responsibility for the application or use of property transferred to a fiduciary which the fiduciary as such is entitled to receive.

H. Notwithstanding the protections provided the transferring entity by the provisions of this act, in the event the transferring entity is uncertain as to the beneficiary entitled to receive a transfer or the beneficiary's proper share, or in the event of a dispute as to the proper transfer, the transferring entity may require the parties to adjudicate their respective rights or to furnish an indemnity bond protecting the transferring entity.

I. A transfer by the transferring entity in accordance with the provisions of this act and pursuant to the beneficiary designation in good faith and in reliance on information the transferring entity reasonably believes to be accurate, discharges the transferring

entity from all claims for the amounts paid and the property transferred.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1327 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Any protection provided to a transferring entity or to a purchaser or lender for value under the provisions of this act shall have no bearing on the rights of beneficiaries or others in disputes among themselves concerning the ownership of the property.

B. Unless the payment or transfer can no longer be questioned because of adjudication, estoppel, or limitations, a transferee of money or property pursuant to a nonprobate transfer that was improperly distributed or paid, is liable to return to the transferring entity or deliver to the rightful transferees the money or property improperly received and the income earned thereon by the transferee. If the transferee does not have the property, then the transferee is liable to return the value of the property as of the date of disposition, and the income and gain received by the transferee from the property and its proceeds. If the transferee has encumbered the property, the transferee shall satisfy any debt incurred that imposes an encumbrance on the property, sufficient to release any security interest, lien, or other encumbrance on the property.

C. A purchaser for value of property or a lender who acquires a security interest in the property from a beneficiary of a nonprobate transfer after the death of the owner, in good faith, takes the property free of any claims of or liability to the owner's estate, creditors of the owner's estate, persons claiming rights as beneficiaries under the nonprobate transfer or heirs of the owner's estate, in absence of actual knowledge that the transfer was improper or that the information in an affidavit, if any, provided pursuant to paragraph 13 of subsection C of Section 25 of this act

is not true; and, a purchaser or lender for value shall have no duty to verify sworn information relating to the nonprobate transfer. The protection provided by this subsection applies to information that relates to the ownership interest of the beneficiary in the property and the beneficiary's right to sell, encumber and transfer good title to a purchaser or lender and does not relieve a purchaser or lender from the notice imparted by instruments of record respecting the property.

D. A nonprobate transfer that is improper because of the application of Sections 20 through 24 of this act shall impose no liability on the transferring entity if made honestly in good faith, regardless of any negligence in determining the proper transferees. The remedy of the rightful transferees shall be limited to an action against the improper transferees.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1328 of Title 58, unless there is created a duplication in numbering, reads as follows:

A deceased owner's creditors, surviving spouse, and unmarried minor children shall have the rights set forth in Section 32 of this act with respect to the value of property passing by nonprobate transfer.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1329 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Subject to the provisions of Section 31 of this act, the provisions of this act apply to a nonprobate transfer on death if at the time the owner designated the beneficiary:

1. The owner was a resident of this state;
2. The obligation to pay or deliver arose in this state or the property was situated in this state; or

3. The transferring entity was a resident of this state or had a place of business in this state or the obligation to make the transfer was accepted in this state.

B. The direction for a nonprobate transfer on death of the owner and the obligation to execute the nonprobate transfer remain subject to the provisions this act despite a subsequent change in the beneficiary, in the rules of the transferring entity under which the transfer is to be executed, in the residence of the owner, in the residence or place of business of the transferring entity or in the location of the property.

C. Sections 1 through 20 and 24 through 26 of this act shall not apply to accounts or deposits in financial institutions unless the provisions of this act are incorporated into the certificate, account, or deposit agreement in whole or in part by express reference.

D. Sections 1 through 20 and 24 through 31 of this act do not apply to property, money, or benefits paid or transferred at death pursuant to a life or accidental death insurance policy, annuity, contract, plan, or other product sold or issued by a life insurance company unless the provisions of this act are incorporated into the policy or beneficiary designation in whole or in part by express reference.

E. Sections 1 through 20 and 24 through 26 of this act shall not apply to any nonprobate transfer where the governing instrument or law expressly provides that the provisions of this act shall not apply.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1330 of Title 58, unless there is created a duplication in numbering, reads as follows:

The district court may hear and determine questions and issue appropriate orders concerning the determination of the beneficiary who is entitled to receive a nonprobate transfer, the proper share

of each beneficiary, and any action to obtain the return of any money or property, or its value and earnings, improperly distributed to any person.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1331 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary designation that purports to have been made and which is valid under the Uniform Probate Code, Uniform TOD Security Registration Law or similar law of another state is governed by the law of that state and the nonprobate transfer may be executed and enforced in this state.

B. The meaning and legal effect of a nonprobate transfer shall be determined by the local law of the particular state selected in a governing instrument or beneficiary designation.

C. The provisions of this act, shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of this act among states enacting a similar law.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1332 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. Each beneficiary who receives a nonprobate transfer of a decedent's property under the provisions of this act and each person who receives other property by a transfer other than from the administration of the decedent's probate estate that was subject to satisfaction of the decedent's debts immediately prior to the decedent's death, but only to the extent of the decedent's contribution to the value of the other property, shall be liable to account to the decedent's personal representative for a pro rata share of the value of all the property received, to the extent necessary to discharge the statutory allowances to the surviving spouse and unmarried minor children, and claims, which remain unpaid

after application of the decedent's estate, including expenses of administration and costs as provided in subsection C of this section, and including estate or inheritance or other transfer taxes imposed by reason of the decedent's death only where payment of those taxes is a prerequisite to satisfying unpaid claims which have a lower level of priority. No proceeding may be brought under this section when the deficiency described in this subsection is solely attributable to costs and expenses of administration.

B. The obligation of a beneficiary of a nonprobate transfer or other recipient of property under subsection A of this section may be enforced by an action for accounting commenced within eighteen (18) months following the decedent's death by the decedent's personal representative, a creditor of the decedent's estate, the decedent's surviving spouse, or one acting for an unmarried minor child of the decedent, but no action for accounting under this section shall be commenced by any person unless the personal representative has received a written demand therefor by a creditor, surviving spouse, or one acting for an unmarried minor child of the decedent. Sums recovered in an action for accounting under this section shall be administered by the personal representative as part of the decedent's estate except as provided in subsection C of this section.

C. The judgment in a proceeding authorized by this section shall take into account the expenses of administration of the estate including the cost of administering the additional assets obtained in the proceeding, and the costs of the proceeding to the extent authorized by this subsection. If the proceeding is commenced by a person other than the personal representative, the court may order the costs of the proceeding, other than attorney fees, to be charged against the amounts recovered and recoverable as a result of the proceeding. If the proceeding is commenced by the personal representative, the court may order the costs of the proceeding,

including attorney fees, to be treated as expenses of administration of the estate.

D. After an action for accounting has been commenced under this section, any party to the proceeding may join and bring into the action for accounting other persons who are liable to account to the decedent's personal representative under subsection A of this section.

E. This section shall not affect the right of any transferring entity, as defined in Section 2 of this act, to execute a direction of the decedent to make a payment or to make a nonprobate transfer or other transfer described in subsection A of this section on death of the decedent, or make the transferring entity liable to the decedent's estate, unless before the payment or transfer is made the transferring entity has been served with process in a proceeding brought under this section and the transferring entity has had a reasonable time to act on it.

F. This section shall not create a lien on any property that is the subject of a nonprobate transfer or other property not subject to probate administration, except as a lien may be perfected by way of attachment, garnishment, or judgment in an accounting proceeding authorized by this section.

G. An action for accounting under this section may be filed in the district court, and the district court may hear and determine questions and issue appropriate orders in an action for accounting under this section.

H. The recipient of any property held in trust that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, and the recipient of any property held in joint tenancy with right of survivorship that was subject to the satisfaction of the decedent's debts immediately prior to the decedent's death, are subject to this section, but only to the extent of the decedent's contribution to the value of the property.

I. This section shall apply to all actions commenced after November 1, 2000, except that with respect to decedents dying prior to November 1, 2000, an action for accounting under this section may be commenced within two (2) years following the decedent's death.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1333 of Title 58, unless there is created a duplication in numbering, reads as follows:

This act shall be cumulative to all other nonprobate transfer statutes in this state.

SECTION 34. This act shall become effective November 1, 2000.

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