

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 908

By: Fisher of the Senate

and

Piatt of the House

(banks and trust companies - establishment of
specified trust types -

effective date)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"An Act relating to banks and trust companies;
amending 6 O.S. 2001, Section 902, which relates to
trustee deposit accounts; clarifying establishment
of certain deposit accounts by certain date; adding
applicability to credit unions; stating new
reference to certain accounts established after
certain date; limiting institutional liability under
certain circumstances; modifying method of
administering certain deposit accounts; modifying
method of payment of certain value of accounts;
providing ownership interest of joint deposit
accounts under certain circumstances; specifying
method of jointly maintaining certain deposit
accounts with two or more trusts; and providing an
effective date.

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

SECTION 1. AMENDATORY 6 O.S. 2001, Section 902, is
amended to read as follows:

Section 902. A. 1. Before November 1, 2005, a deposit account
may be established at a bank or credit union in this state as a
Totten Trust, as follows: Whenever any deposit shall be made in a
~~bank~~ Oklahoma in a bank or credit union by ~~any person~~ an individual,
which is in form in trust for another, and no other or further
notice of the existence and terms of a legal and valid trust or

other required fiduciary relationship shall have been given in writing to the ~~bank~~ institution, in the event of the death of the trustee, the same, or any part thereof, together with the interest thereon, may be paid to the person or persons for whom the deposit was made. A deposit held in this form shall be deemed to constitute a Totten Trust. A revocation of such trust may only be made in writing to the bank ~~and the bank~~ or credit union, which shall not suffer any liability for payment of funds pursuant to the trust unless and until it receives written notice of revocation.

2. On or after November 1, 2005, deposit accounts established in this state at a bank or credit union shall no longer be established as Totten Trusts, but shall be opened as "Payable on Death" or P.O.D. accounts or other appropriately styled deposit accounts. Effective November 1, 2005, any previously existing deposit account in Oklahoma that was established with a bank or credit union as a Totten Trust shall automatically be deemed a "Payable on Death" or P.O.D. account, as provided in subsection B of Section 901 of this title, with the named individual trustee or trustees on the account being deemed thereafter to be, as applicable, either the sole owner, or joint owners with right of survivorship if there is more than one trustee, and any named individual beneficiary or beneficiaries of the Totten Trust being thereafter deemed to be a P.O.D. beneficiary or P.O.D. beneficiaries with rights that arise only upon the death of the last-named owner of the account, as provided in subsection B of Section 901 of this title. However, if any trustee of a Totten Trust asserts in an affidavit delivered to the institution that the trustee or trustees has or have no beneficial ownership in the deposit account, that institution shall have no liability for restyling the account and administering it in a manner that the trustee by affidavit asserts is the true ownership relationship with respect to the deposit account.

B. 1. If a deposit account is requested to be opened ~~with a~~ ~~bank~~ by one or more ~~persons~~ individuals expressly as a trustee for one or more other named ~~persons~~ individuals and further notice of the existence and terms of a legal and valid trust or other required fiduciary relationship is not given in writing to the ~~bank, the bank~~ institution, it may accept and administer the account as set forth in paragraph 1 or 2 of subsection A of this section, whichever applies.

2. a. If a deposit account is opened in Oklahoma with a ~~a~~ any bank or credit union by one or more persons expressly as a trustee for one or more other named persons pursuant to or purporting to be pursuant to a written trust agreement, the trustee may provide the ~~bank~~ institution with a certificate of trust complying with the following provisions to evidence the trust relationship. The certificate shall be an affidavit of the trustee and, notwithstanding any other provision of law, must include the effective date of the trust, the name of the trustee, the name or method for choosing successor trustees, the name and address of each beneficiary, the authority granted to the trustee, the disposition of the account on the death of the trustee or the survivor of two or more trustees, other information required by the ~~bank~~ institution, and an indemnification of the ~~bank~~ institution.

b. The ~~bank~~ institution may accept ~~and administer~~ the account, subject to the provisions of Title 58 of the Oklahoma Statutes, in accordance with the certificate of trust, as specified in subparagraph a of this paragraph, without requiring or reviewing a copy of the trust agreement. The institution may continue to administer the account, subject to provisions of Title 58 of the Oklahoma Statutes, in accordance with a certificate of trust that was in compliance with Oklahoma law as to form and contents on the date when the certificate was first provided to the institution, together with any supplemental or amended written information that a

trustee subsequently provides. The ~~bank~~ institution is not liable for administering the account as provided by the certificate of trust, together with any subsequently provided written information, even if the certificate of trust or subsequent written information is contrary to the terms of the trust agreement, unless the ~~bank~~ institution has actual knowledge of the terms of the trust agreement.

3. a. On the death of the sole trustee or the survivor of two or more trustees, ~~the bank~~ and if no successor trustee legally eligible and willing to serve is named in the most recent certificate of trust or subsequent written information, the institution may pay all or part of the withdrawal value of the account with interest ~~as provided by,~~ in accordance with dispositive provisions summarized in the certificate of trust. ~~If the trustee did not deliver a certificate of trust, the bank's right to treat the account as owned by a trustee ceases on the death of the trustee. On the death of the trustee or the survivor of two or more trustees, the bank shall, unless the certificate of trust provides otherwise, pay the withdrawal value of the account, with interest, in equal shares to the persons who survived the trustee, are named as beneficiaries in the certificate of trust, and can be located by the bank from its own records~~ and stated as taking effect upon the death of the trustee or trustees. If multiple beneficiaries are named in the certificates of trust, and their respective shares are not specified, the institution may assume for the purpose of any payment to the named beneficiaries that they are entitled to equal shares.

b. ~~If there is not~~ the institution has not been presented with a certificate of trust or a copy of the purported trust agreement, payment of the withdrawal value and interest shall be made as provided by Title 58 of the Oklahoma Statutes.

c. Any payment made under this section for all or part of the withdrawal value and interest discharges any liability of the ~~bank~~ institution to the extent of the payment. The ~~bank~~ institution may pay all or part of the withdrawal value and interest in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the ~~bank~~ institution receives actual knowledge that payment has been restrained by order of a court of competent jurisdiction.

4. This section does not obligate ~~a bank to accept a deposit account from a trustee who does not furnish a copy of the trust agreement or~~ an institution to search beyond its own records for the location of a named beneficiary.

5. This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

C. Any joint deposit account maintained in this state at any bank or credit union by two or more trusts shall be a "tenants in common" account and not a "joint tenancy with right of survivorship", notwithstanding documentation to the contrary. Two or more trusts may jointly maintain a "tenants in common" deposit account in this state if the institution is given reasonable evidence that each grantor of each trust has consented in writing to placing trust funds in a commingled account, and each trustee of each trust makes written representation to the institution that:

1. The funds of each separate trust, deposited to such commingled account, shall be spent only for the permitted purposes of that separate trust; and

2. Clear records will be maintained at all times by the trustee or trustees, showing how much of the remaining funds in the deposit account belongs to each of the trusts.

Notwithstanding any other provision of law, an institution that obtains written evidence and representations as provided in this subsection will not be liable in any respect for allowing the

"tenants in common" relationship to exist between trusts, nor for the manner in which the funds in the deposit account are spent or otherwise transferred by any trustee or authorized agent."

SECTION 2. This act shall become effective November 1, 2005.

Passed the House of Representatives the 14th day of April, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate