

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 658

By: Hendrick of the Senate

and

Morgan of the House

(investments - Oklahoma Uniform Prudent Investor Act -
codification - effective date)

AUTHOR: Add the following House Coauthor: Thornbrugh

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

An Act relating to banking and investments; creating
the Oklahoma Uniform Prudent Investor Act;
providing short title; stating duty of certain
trustee to comply with prudent investor rule;
allowing modification of prudent investor rule;
limiting liability of trustee; providing standard
of care; providing for evaluation of trustee's
decisions; requiring trustee consideration of
certain circumstances; stating duties of trustee;
requiring diversification; requiring trustee
performance of certain duties at inception of
trusteeship; requiring trustee to be loyal in
performance of duties; requiring trustee to be
impartial in performance of duties; providing for
limited investment costs; stating conditions for
review of compliance with prudent investor rule;

providing for trustee delegation of certain duties; limiting trustee's liability for actions of agent; declaring state's jurisdiction over agent; stating language which invokes standard of the Oklahoma Uniform Prudent Investor Act; stating application to existing trusts; requiring uniform application and construction; amending 6 O.S. 1991, Sections 102 and 103, which relate to definitions in the Oklahoma Banking Code of 1965; adding, modifying, and deleting definitions; amending 6 O.S. 1991, Section 208, as amended by Section 3, Chapter 157, O.S.L. 1994 (6 O.S. Supp. 1994, Section 208), which relates to records of Banking Department; modifying certain records designated as public records; deleting certain definitions; amending 6 O.S. 1991, Section 421, which relates to military banking facilities; deleting certain definitions; amending 6 O.S. 1991, Section 501.1, as amended by Section 1, Chapter 52, O.S.L. 1993 (6 O.S. Supp. 1994, Section 501.1), which relates to branch banking; deleting certain definitions; modifying references to certain branches of banks; modifying deposit limitation and the application of such deposit limitation to certain banks; deleting reference to certain insured deposits; modifying financial institutions subject to certain authorized acquisitions; modifying time period in which certain bank must be in existence in order to be acquired and operated as a branch; prohibiting an out-of-state bank from establishing a de novo branch; permitting certain banks to be acquired by and engage in certain interstate merger

transaction; providing certain limitations; providing for certain powers and duties and regulation of certain acquired banks; prohibiting certain branch banks from establishing separate branches or limited service facilities or engage in certain activity; permitting establishment of certain branch banks; providing for application, regulation, and powers of certain branch banks; providing an effective date; amending 6 O.S. 1991, Section 502, as amended by Section 9, Chapter 183, O.S.L. 1993 (6 O.S. Supp. 1994, Section 502), which relates to bank holding companies; deleting certain definitions; modifying references to foreign banks; modifying limitation of certain banks to acquire direct or indirect ownership or control of certain financial institution; modifying certain deposit limitation; deleting reference to certain deposits not being included in deposit limitation; deleting acquisition provisions at request of certain regulatory authorities; modifying limitations on acquisitions; modifying certain reports and examinations to include certain out-of-state bank holding companies; amending 6 O.S. 1991, Section 505, which relates to foreign bank holding companies; modifying reference to certain in-state and foreign banks and bank holding companies; deleting branching, acquisition and conversion requirements by subsidiaries; amending 6 O.S. 1991, Section 506, which relates to acquisition of control of foreign bank holding companies; modifying reference to certain Oklahoma and foreign banks; deleting reference to certain in-state

financial institutions which could have been acquired under certain law; modifying certain prohibited transactions; modifying certain reference to in-state banks regarding approvals of acquisition; deleting certain acquisitions requirements applicable to Oklahoma bank or bank holding company; deleting certain branching, acquisition and conversion by subsidiaries requirements; modifying certain references to in-state and foreign banks with regard to limitations and restrictions and applicable law; amending 6 O.S. 1991, Sections 1416 and 1417, as last amended by Section 9, Chapter 157, O.S.L. 1994 (6 O.S. Supp. 1994, Section 1417), which relate to definitions and prohibitions relating to control of banks and advertisement of confusingly similar names; deleting certain definitions; repealing 6 O.S. 1991, Section 504, which relates to definitions; 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 175.60 of Title 60, unless there is created a duplication in numbering, reads as follows:

Short Title.

Sections 1 through 13 of this act shall be known and may be cited as the "Oklahoma Uniform Prudent Investor Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.61 of Title 60, unless there is created a duplication in numbering, reads as follows:

Prudent Investor Rule.

A. Except as otherwise provided in subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Oklahoma Uniform Prudent Investor Act.

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.62 of Title 60, unless there is created a duplication in numbering, reads as follows:

Standard of Care; Portfolio Strategy; Risk and Return Objectives.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following as are relevant to the trust or its beneficiaries:

1. General economic conditions;
2. The possible effect of inflation or deflation;
3. The expected tax consequences of investment decisions or strategies;

4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

5. The expected total return from income and the appreciation of capital;

6. Other resources of the beneficiaries;

7. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and

8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Oklahoma Uniform Prudent Investor Act.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.63 of Title 60, unless there is created a duplication in numbering, reads as follows:

Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.64 of Title 60, unless there is created a duplication in numbering, reads as follows:

Duties at Inception of Trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of the Oklahoma Uniform Prudent Investor Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.65 of Title 60, unless there is created a duplication in numbering, reads as follows:

Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.66 of Title 60, unless there is created a duplication in numbering, reads as follows:

Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.67 of Title 60, unless there is created a duplication in numbering, reads as follows:

Investment Costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.68 of Title 60, unless there is created a duplication in numbering, reads as follows:

Reviewing Compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.69 of Title 60, unless there is created a duplication in numbering, reads as follows:

Delegation of Investment and Management Functions.

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.70 of Title 60, unless there is created a duplication in numbering, reads as follows:

Language Invoking Standard of the Oklahoma Uniform Prudent Investor Act.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Oklahoma Uniform Prudent Investor Act: "Investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.71 of Title 60, unless there is created a duplication in numbering, reads as follows:

Application to Existing Trusts.

The Oklahoma Uniform Prudent Investor Act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only decisions or actions occurring after that date.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.72 of Title 60, unless there is created a duplication in numbering, reads as follows:

Uniformity of Application and Construction.

The Oklahoma Uniform Prudent Investor Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

SECTION 14. AMENDATORY 6 O.S. 1991, Section 102, is amended to read as follows:

Section 102. As used in the Banking Code unless the context otherwise requires:

~~A.~~ 1. "Acquisition" or "acquire" means any act or action with respect to the ownership or control of a bank or the purchase of its assets and the assumption of its liabilities which would require the approval of the Board of Governors of the Federal Reserve System under the Bank Holding Company Act of 1956, as amended, or the Office of Thrift Supervision under the Savings and Loan Holding Company Act, as amended;

2. "Bank" means any bank authorized and chartered by the laws of the this state to engage in the banking business, or any bank chartered by the office of the Comptroller of the Currency with its main office in this state;

~~B. "National Bank" or "National Banking Association" means any bank chartered by the office of the Comptroller of the Currency and located in this state.~~

~~C.~~ 3. "Banking company" means any bank;

4. "Bank holding company" means any Oklahoma corporation which directly or indirectly owns or controls at least one bank as defined in this section;

5. "Branch bank" means any place of business separated from the main office of a bank at which deposits are received, or checks paid or money lent;

6. "Capital" shall include the paid-in common capital stock account, preferred stock account, surplus account, undivided profits account, capital reserves (other than contingency reserves), allowance for possible loan losses and mandatory convertible instruments that are convertible into common stock. "Capital" shall also include all other approved subordinated notes and debentures, having an original weighted average maturity of at least seven (7) years, to the extent their maturity date exceeds five (5) years. As such notes and debentures approach maturity of less than five (5) years, they shall be considered "capital" in proportion to their years to maturity as it bears to five (5) years.;

~~D. "Commercial Bank" means any state bank chartered to do a general commercial banking business.~~

~~E. 7. "Company" means any corporation, association, partnership, business trust or similar organization, but shall not include any corporation, the majority of the shares of which are owned by the United States or by any state;~~

8. "Compliance review committee" means:

- a. an audit, loan review or compliance committee appointed by the Board of Directors of an insured depository institution, or
- b. any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;

9. "Compliance review documents" means documents prepared for or created by a compliance review committee;

10. "Confusingly similar name" means:

- a. as applied to the name of any bank, a name which is identical to that of any other bank located within this state, or a name which:
 - (1) contains one or more of the following words with or without the words "State," "National," or "Trust": American, Central, Citizens, City, Commerce, Commercial, Community, Exchange, Farmers & Merchants, First, Guaranty, Oklahoma, Peoples, Security or United,
 - (2) does not contain a geographical name (other than "Oklahoma") descriptive of the immediate location of the bank (street, town, city, county or other local geographical name),
 - (3) does not contain other unique or clearly distinguished words or marks, and

(4) is not a federally registered trade name, trademark or service mark owned by or licensed to the particular bank, or

b. as applied to the name of any person not a bank, a name which is confusingly similar in spelling or wording or sound to the name of any bank located anywhere within this state, if such name would tend to suggest falsely to the public that the person is a bank or is affiliated with the bank, directly or indirectly. However, nothing contained in this subsection shall prohibit the use of a similar name by a corporation which is in a relationship to the bank of parent, subsidiary, brother-sister corporation or other commonly controlled company.

The Board shall promulgate rules which govern the use of "confusingly similar names" as defined in this paragraph;

11. "Consumer Banking Electronic Facility" means any manned or unmanned electronic device or machine when located separate and apart from a main office or detached facility or branch of a bank and which performs only those services which may legally be performed by banks for their customers pursuant to contractual agreements between the bank and its customers entered into at the bank's main office or branch. As to manned devices or machines, the term "manned" shall not be interpreted to allow persons employed, either directly or indirectly, by any bank or out-of-state bank or any savings association to assist or perform any services with customers using the manned devices or machines;

12. "Control" means control as such term is defined under the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841;

13. "Continuing Bank" means a merging bank the charter of which becomes the charter of the resulting bank.;

~~F.~~ 14. "Converting Bank" means a bank converting from a state to a national bank, or the reverse;

~~G.~~ 15. "Deposits" means all demand, time and savings deposits of individuals, partnerships, corporations, the United States and states and political subdivisions of the United States, but does not include deposits of banks or foreign governments or institutions or deposits held by foreign banking offices or corporations organized pursuant to 12 U.S.C., Sections 601 through 604a, or Sections 611 through 631, as amended. Determinations of deposits shall be made by the Commissioner by reference to regulatory reports of condition or similar reports filed by banks or savings associations with state or federal regulatory agencies;

16. "Insured depository institution" means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

17. "Interstate merger transaction" means a merger between two banks, two savings associations or a bank and a savings association, one of which is chartered by or has its main office located in this state, and the other of which is an out-of-state bank as defined in this section;

18. "Legal Newspaper" means a newspaper qualified to publish legal notices under the provisions of Section 106 of Title 25 of the Oklahoma Statutes;

~~H.~~ 19. "Loan review committee" means a person or group of persons who, on behalf of an insured depository institution, reviews loans held by such institution for the purpose of assessing the credit quality of the loans, compliance with the loan policies of such institution, and compliance with the applicable state and federal laws, regulations and rules;

20. "Local media" means:

- a. any newspaper, radio station or television station with its main office located in the same city or town

in which a particular main office of a bank is located, and

- b. other means or media of advertising, including without limitation any outdoor signage on the premises of the bank, billboards, bulk mailings and other solicitations to persons who are not customers of the bank, but only to the extent that any such advertising is strictly limited in geographical location or distribution to the same city or town (including the immediate surrounding unincorporated rural area) where the particular main office of the bank is located;

21. "Main bank" means the office location which has been designated by the State Banking Commissioner or Comptroller of the Currency as the main office of a bank;

22. "Main office" means either the main bank or the main office location of a savings association;

23. "Military banking facility" means a detached facility maintained by a bank upon a military institution within this state, provided the military banking facility must be within the confines of a military reservation and located upon property owned or leased by the United States government;

24. "Merger" includes consolidation;

~~I. "Merging Bank" means a party to a merger.~~

~~J.~~ 25. "Multi-bank holding company" means an Oklahoma corporation which directly or indirectly owns or controls two or more banks, two or more bank holding companies, or one or more of each as defined in this section;

26. "Out-of-state bank" means a national bank or a state or federal savings association which has its main office located in a state other than Oklahoma, or a bank chartered by a state other than Oklahoma;

27. "Out-of-state bank holding company" means a bank holding company with respect to which the largest amount of total deposits of all banking subsidiaries of the company are located in a state other than Oklahoma;

28. "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity;

29. "Resulting Bank" means the combined banks and trust companies carrying on business upon completion of a merger;

~~K.~~ 30. "Retailer" means a person, corporation or partnership, primarily engaged in the sale of goods at retail to the general public;

31. "Savings association" means any savings and loan association or savings bank chartered under the laws of this state or the laws of the United States authorized to engage in the savings and loan business with its main office located in this state;

32. "Savings association branch" means any place of business separated from the main office of a savings association at which deposits are received, checks paid or money lent;

33. "Subsidiary" with respect to a specified bank holding company or multi-bank holding company means a subsidiary as the term is defined in the Federal Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841; and

34. "Trust Company" means any person doing a trust company business as set forth in this Code and the trust departments of banks authorized to engage in the trust company business.

~~L. "Consumer Banking Electronic Facility" means any manned or unmanned electronic device or machine when located separate and apart from a bank's principal office or detached facility and which performs only those services which may legally be performed by banks for their customers pursuant to contractual agreements between the bank and its customers entered into at the bank's principal office.~~

~~As to manned devices or machines, referred to hereinabove, the term "manned" shall not be interpreted to allow persons employed, either directly or indirectly, by any bank, to assist or perform any services with customers using the same.~~

~~M. "Retailer", as used in this act, is a person, corporation or partnership, primarily engaged in the sale of goods at retail to the general public.~~

SECTION 15. AMENDATORY 6 O.S. 1991, Section 103, is amended to read as follows:

Section 103. In this act, unless the context otherwise requires:

~~A. 1. "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, third party claims, cross claims, setoff, suit in equity, arbitration and any other proceedings in which rights are determined;~~

~~B. 2. "Board" when used with an initial capital letter means the Banking Board of this state;~~

~~C. 3. "Commissioner" means the State Banking Commissioner appointed and serving pursuant to this act, who shall be the Commissioner of Banking and who shall administer and enforce the applicable provisions of this act;~~

~~D. 4. "Community" means a city, town or incorporated village of this state, or a trade area in this state in unincorporated territory;~~

~~E. 5. "Court" means a court of competent jurisdiction;~~

~~F. 6. "Department" means the Department of Banking of this state created by this Code;~~

~~G. 7. "Executive officer", when referring to a bank, out-of-state bank or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, the chairman of the board of directors, chairman of the executive committee, the president, any vice president, the trust officer, the treasurer, the~~

cashier, the comptroller and the secretary, or any person who performs the duties appropriate to those offices-;

~~H.~~ 8. "Fiduciary" means original or successor trustee of an expressed or implied trust, including, but not limited to, a resulting or constructive trust, special administrator, executor, administrator, administrator common trust agreement, guardian, guardian-trustee or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust acting alone or with others-;

~~I.~~ 9. "Good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized-;

~~J.~~ 10. "Insolvent" means that the actual cash market value of a bank's assets is insufficient to pay its liabilities other than its capital stock, surplus and undivided profits; or that the bank is unable to meet the demands of its creditors in the usual course of business-;

~~K.~~ 11. "Item" means any instrument for the payment of money even though not negotiable, but does not include money-;

~~L.~~ 12. "Officer", when referring to a bank, out-of-state bank or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant trust officer, assistant vice president, assistant treasurer, assistant cashier, assistant comptroller, assistant secretary, auditor or any person who performs the duties appropriate to those offices-;

~~M.~~ 13. "Managing officer" means the chief executive officer of the bank-;

~~N.~~ 14. "Order" means all, or any part, of the final disposition, whether affirmative, negative, injunctive or

declaratory in form, by the Commissioner or the Banking Board, of any matter other than the making of regulations of general application-;

~~O. "Person" means an individual, corporation, partnership, joint venture, trust estate or unincorporated association or any other legal or commercial entity.~~

~~P. 15. "Reason to know" means that upon the information available a person of ordinary intelligence in the particular business, or of the superior intelligence or experience which the person in question may have, would infer that the fact in question exists or that there is such a substantial chance of its existence that, if exercising reasonable care with reference to the matter in question, conduct would be predicated upon the assumption of its possible existence-;~~

~~Q. 16. "National Bank Examiner" or "Federal Bank Examiner" means any person employed as a bank examiner by the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve Board or Bank-;~~

~~R. 17. "Determining population", for the purpose of the Bank Act, means the population shown and determined by the last preceding federal census, or any subsequent census compiled and certified under any law of this state, and is deemed to be the population of any city or town in which any such bank has its principal place of business main office. If the principal place of business main office of any bank or trust company is located outside the boundary or corporate limits of any city or town, then the population within a radius of three (3) miles of its principal place of business main office, which is not included within the boundaries of any municipality, as such population is shown and determined by such federal or subsequent official census, shall be the basis for classification under the Bank Act. this act;~~

~~S.~~ 18. "Office" means any place at which a bank or an out-of-state bank transacts its business or conducts operations related to its business; and

~~T.~~ 19. "Emergency" means any condition or occurrence which may interfere physically with the conduct of normal business operations at one or more or all of the offices of a bank or an out-of-state bank, or which poses an imminent or existing threat to the safety or security of persons or property, or both. Without limiting the generality of the foregoing, an emergency may arise as a result of any one or more of the following: fires; floods; earthquakes; hurricanes; wind, rain, or snow storms; labor disputes and strikes; power failures; transportation failures; interruptions of communication facilities; shortages of fuel, housing, food, transportation or labor; robberies or attempted robberies; actual or threatened enemy attack; epidemics or other catastrophes; riots, civil commotions and other acts of lawlessness or violence, actual or threatened.

~~U.~~ ~~"Savings association" means any savings and loan association or savings bank chartered under the laws of this state or any federal savings and loan association or savings bank which is authorized to engage in the savings and loan business and is located in this state.~~

~~V.~~ ~~"Institution" means a bank or a savings association whether state or national.~~

SECTION 16. AMENDATORY 6 O.S. 1991, Section 208, as amended by Section 3, Chapter 157, O.S.L. 1994 (6 O.S. Supp. 1994, Section 208), is amended to read as follows:

Section 208. A. The following records in the Banking Department are designated as public records:

1. All applications for state bank charters and supporting information with the exception of personal financial records of individual applicants;

2. All records introduced at public hearings on bank charter applications;

3. Information disclosing the failure of a state bank, an out-of-state bank and branches of out-of-state banks located in this state and the reasons therefor;

4. Reports of completed investigations which uncover a shortage of funds in a bank, an out-of-state bank and branches of out-of-state banks located in this state, after the reporting of the shortage to proper authorities by the Commissioner;

5. Names of all ~~bank~~ stockholders and officers of banks, out-of-state banks, out-of-state bank holding companies, and branches of out-of-state banks located in this state filed in the office of the Secretary of State; and

6. Regular financial call reports issued at the time of the state bank calls.

B. All other records in the Banking Department shall be confidential and not subject to public inspection; provided, however, that the State Banking Board, State Bank Commissioner, or Deputy Commissioner may divulge such confidential information with the written approval of the Commissioner after receipt of a written request which shall:

1. Specify the record or records to which access is requested; and

2. Give the reasons for the request. Such records may also be produced pursuant to a valid judicial subpoena or other legal process requiring production, if the Commissioner determines that the records are relevant to the hearing or proceeding and that production is in the best interests of justice. The records may be disclosed only after a determination that good cause exists for the disclosure. Either prior to or at the time of any disclosure, the Commissioner shall impose such terms and conditions as ~~he~~ the Commissioner deems necessary to protect the confidential nature of

the record, the financial integrity of any institution to which the record relates, and the legitimate privacy interests of any individual named in such records.

~~C. For purposes of this section:~~

~~1. "Depository institution" means a state-chartered or federally chartered financial institution located in this state that is authorized to maintain deposit or share accounts;~~

~~2. "Compliance review committee" means:~~

~~a. an audit, loan review or compliance committee appointed by the Board of Directors of a depository institution, or~~

~~b. any other person to the extent the person acts in an investigatory capacity at the direction of a compliance review committee;~~

~~3. "Compliance review documents" means documents prepared for or created by a compliance review committee;~~

~~4. "Loan review committee" means a person or group of persons who, on behalf of a depository institution, reviews loans held by the institution for the purpose of assessing the credit quality of the loans, compliance with the loan policies of the institution, and compliance with the applicable laws and regulations; and~~

~~5. "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation, or other entity.~~

~~D. This section applies to a compliance review committee whose functions are to evaluate and seek to improve:~~

~~1. Loan underwriting standards;~~

~~2. Asset quality;~~

~~3. Financial reporting to federal or state regulatory agencies;~~

~~or~~

~~4. Compliance with federal or state statutory or regulatory requirements.~~

~~E.~~ D. Except as provided in subsection ~~F~~ E of this section:

1. Compliance review documents are confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee; and

2. Compliance review documents delivered to a federal or state governmental agency remain confidential and are not discoverable or admissible in evidence in any civil action arising out of matters evaluated by the compliance review committee.

~~F.~~ E. Subsection ~~E~~ D of this section does not apply to any information required by statute or regulation to be maintained by or provided to a governmental agency while the information is in the possession of the governmental agency to the extent applicable law expressly authorizes its disclosure.

~~G.~~ F. This section may not be construed to limit the discovery or admissibility in any civil action of any documents that are not compliance review documents, nor may it be construed to limit the discovery or admissibility of any relevant documents which reflect evidence of fraud committed by an insider of a depository institution, to the extent those documents are otherwise discoverable or admissible.

SECTION 17. AMENDATORY 6 O.S. 1991, Section 421, is amended to read as follows:

Section 421. A. Military banking facilities authorized. Any bank located in the State of Oklahoma may, subject to the approval of the Board as evidenced by its certificates, and subject to the approval of the military installation commander as evidenced by a letter of approval, maintain and operate a detached facility on any military installation located in the State of Oklahoma.

B. ~~Definition. As used in this section, the following terms shall have the following meanings:~~

~~(1) "Bank" means any national bank or national banking association or any state bank or state banking association, whether~~

~~organized under the laws of Oklahoma, or the laws of the United States, and located in the State of Oklahoma.~~

~~(2) "Military Banking Facility" means a detached facility maintained by a bank upon a military installation within the State of Oklahoma, provided such military banking facility must be within the confines of a military reservation and located upon property owned or leased by the United States Government.~~

~~C.~~ Certificate to maintain military banking facilities - Notice and hearing - Injunction of prohibited activities.

~~(1)~~ 1. From and after the passage of this Code, no bank shall be permitted to maintain and operate such military banking facility, except on certificate issued by the Board. The issuance of such certificate shall rest solely in the discretion of the Commissioner and the Board.

~~(2)~~ 2. The application for a certificate to maintain and operate a military banking facility shall comply with the regulations of the Board. Within thirty (30) days after receipt of the application, the Commissioner shall report the results of ~~his~~ the investigation to the Board. Notice of Hearing on the application shall be given in compliance with ~~subsections C., D. and E. of Section 306~~ applicable law. Within twenty (20) days after the conclusions of the hearing the Board shall, in its sole discretion, approve or deny the application and shall notify the applicant of its decision.

~~(3)~~ 3. No banking function shall be performed at the facility save that of accepting deposits, cashing checks, making change, selling bank paper, such as bank drafts, cashier's checks, money orders, traveler's checks, etc., accepting payment for personal utility bills, redeeming and selling United States Savings Bonds, and such other services as the installation commander may request, in writing, of the bank. Upon the recommendation of the Commissioner, the Attorney General shall bring an appropriate action

to enjoin a bank from conducting banking functions at such facility other than those herein granted.

~~(4)~~ 4. Any bank now validly operating a detached military banking facility prior to this Code shall be granted a certificate to continue its operation at such facility, but limited to the functions set out in ~~subsection (3) above~~ paragraph 3 of this subsection.

~~D.~~ C. Violation of Section 421 - Penalty therefor. A violation of any portion of this section shall be and constitute a misdemeanor punishable upon conviction by a fine not exceeding Five Hundred Dollars (\$500.00). Each day's violation shall constitute a separate offense.

SECTION 18. AMENDATORY 6 O.S. 1991, Section 501.1, as amended by Section 1, Chapter 52, O.S.L. 1993 (6 O.S. Supp. 1994, Section 501.1), is amended to read as follows:

Section 501.1 A. ~~Definitions. As used in this section:~~

~~1. "Bank" means any bank chartered under the laws of this state or any national bank which is authorized to engage in the banking business and is located in this state.~~

~~2. "Branch" means any place of business separated from the main office of a bank at which deposits are received, or checks paid, or money lent.~~

~~3. "Main Bank" means the office location which has been designated by the State Banking Commissioner or Comptroller of the Currency as the main office of a bank.~~

~~4. "Main office" means either the main bank or the main office location of a savings association.~~

~~5. "Savings association" means any savings and loan association or savings bank chartered under the laws of this state or any federal savings and loan association or savings bank which is authorized to engage in the savings and loan business and is located in this state.~~

~~6. "Savings association branch" means any place of business separated from the main office of a savings association at which deposits are received, or checks paid, or money lent.~~

~~B. Authorization to establish branches.~~

1. Any bank may establish and perform any banking function at no more than two ~~branches~~ branch banks on property owned or leased by the bank as follows:

- a. located within the corporate city limits where the main bank is located; or
- b. located within twenty-five (25) miles of the main bank if located in a city or town which has no state or national bank located in said city or town; provided however, if an application for a bank charter has been filed, the State Banking Board shall give priority to the charter application.

2. Neither the Board nor the Comptroller of the Currency shall grant a certificate for any branch bank unless it is more than three hundred thirty (330) feet from any main bank or branch bank in counties with a population of five hundred thousand (500,000) or more according to the ~~1980~~ latest Federal Decennial Census unless the branch bank is established with the irrevocable consent of such other bank. This distance limitation shall be determined by measuring along a straight line drawn between the nearest exterior wall of the appropriate main bank building or branch bank building and the nearest exterior wall of the branch bank or facility.

3. If at the time of acquisition of a bank pursuant to subsection ~~D~~ C of this section no other state or national bank was located in the same city or town as the acquired bank, the Board or the Comptroller of the Currency shall not grant any other bank a certificate to establish a branch bank within such city or town for a period of five (5) years after the acquisition and operation of the branch bank.

~~C.~~ B. Authorization to accept deposits at institutions of higher education. Any main bank, branch bank or savings association located in a county where an institution of higher education is located may open accounts and accept deposits for not to exceed three (3) days per year on the campus of the institution of higher education at an institution-sponsored event if permission is granted by the institution.

~~D.~~ C. Authorization to branch by acquisition. Subject to the limitations in subsection ~~E~~ D of this section, any bank may acquire and operate as ~~branches of the bank~~ branch banks at which any banking function may be performed an unlimited number of banks or savings associations or ~~bank branches~~ branch banks or savings association branches without restriction on location. Any such acquisition of a bank or savings association may include all of the assets and liabilities of the bank or savings association and all branches and facilities thereof which have been established prior to the date of the acquisition as determined by the Board or the Comptroller of the Currency.

If a bank or savings association acquired pursuant to this subsection had no outside-attached facilities or detached facilities permitted under Section 415 of this title or Section 381.24b of Title 18 of the Oklahoma Statutes at the time of acquisition, the acquiring bank may establish such facilities after the acquisition.

~~E.~~ D. Deposit limitation.

1. It shall be unlawful for any bank or out-of-state bank to acquire any other bank or savings association in Oklahoma or any portion of its assets if such acquisition would result upon consummation in the continuing bank or its parent company having direct or indirect ownership or control of more than ~~eleven~~ twelve and twenty-five one-hundredths percent ~~(11%)~~ (12.25%) of the ~~aggregate~~ total amount of deposits of all financial insured depository institutions located in Oklahoma ~~which have deposits~~

~~insured by the Federal Deposit Insurance Corporation, and National Credit Union Administration~~ as determined by the Commissioner on the basis of the most recent reports of such institutions to their supervisory authorities which are available at the time of the proposed acquisition.

2. The deposit limitation provided for in this subsection shall not apply to disallow an acquisition of a bank or savings association if control results only by reason of ownership or control of shares of a bank or savings association acquired directly or indirectly:

- a. in a good faith fiduciary capacity, except when such shares are held for the benefit of the acquiring bank's shareholders; or
- b. by a bank in the regular course of securing or collecting a debt previously contracted in good faith; or
- c. at the request of or in connection with the exercise of regulatory authority for the purpose of preventing imminent failure of the bank or savings association or to protect the depositors thereof as determined by the principal supervisory agency in its sole discretion.

Provided, however, at the end of a period of five (5) years from the date of acquisition, for the circumstances set forth in subparagraphs b and c of this paragraph, the deposits of the acquired bank or savings association shall be included in computing the deposit limitation and if deposits are in excess, appropriate reductions and disposition shall be made within six (6) months to meet such limitations. Further, in the circumstances set forth in subparagraph c of this paragraph, the Commissioner and the Federal Deposit Insurance Corporation shall give priority in authorizing any such acquisition to any acquiring bank whose total deposits do not exceed the deposit limitation.

~~F.~~ E. Authorized acquisitions. Subject to the limitations in subsection ~~E~~ D of this section, a bank ~~for which the application for charter was granted after December 31, 1986,~~ branch bank, savings association or savings association branch shall not be acquired by a bank and operated as a branch bank until ~~such~~ the bank has been in existence and continuous operation for a period of ~~more than~~ five (5) years. ~~Provided, however~~ However, the provisions of this subsection shall not prevent a bank from acquiring a bank to be operated as a branch bank whose charter was granted for the purpose of:

1. Purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital; or

2. Acquiring or merging with an existing bank with an interim bank charter in accordance with the laws of this state or of the United States.

~~G.~~ F. Certificate to establish and operate a branch.

1. No bank shall be permitted to establish or operate a branch bank except upon certificate issued by the Board or Comptroller of the Currency.

2. The application for a certificate to establish or operate a branch bank of a state bank shall comply with the regulations of the Board. Within thirty (30) days after receipt of the application, the Commissioner shall report the results of ~~his~~ the investigation to the Board. Notice of hearing on the application shall be given in compliance with Section 306.1 of this title. Within twenty (20) days after the conclusion of the hearing, the Board, in its sole discretion, shall approve or deny the application and shall notify the applicant of its decision. An application fee may be assessed in an amount set by rule of the Board, not to exceed the fee amount set by the Comptroller of the Currency for national bank branch applications.

~~H.~~ G. Right to operate and maintain facilities. The provisions of this section shall not be construed in derogation or denial of the right to operate and maintain facilities as provided for in Sections 421 and 422 of this title.

~~I.~~ H. Sanctions. A violation of any portion of this section, upon conviction, shall be a misdemeanor punishable by a fine not exceeding Five Hundred Dollars (\$500.00). Each day's violation shall constitute a separate offense.

I. No out-of-state bank shall be permitted to establish a de novo branch in this state.

J. Beginning June 1, 1996, a bank, branch bank, savings association or savings association branch which has been in existence for five (5) years may be acquired by and engage in an interstate merger transaction with any out-of-state bank in accordance with applicable laws and rules of the Department and the state in which the main office of the out-of-state bank is located. An interstate merger transaction will not be permitted if it will result in a violation of the twelve and twenty-five one-hundredths percent (12.25%) deposit limitation contained in subsection D of this section. If the result of an interstate merger transaction is that the bank or savings association which is acquired is converted to a branch bank of an out-of-state bank, it shall have all the powers and be subject to the same limitations as any other branch bank located in this state. All branch banks of an out-of-state bank shall be regulated by the Commissioner as if the branch banks comprised an Oklahoma bank and the branch banks shall comply with applicable Oklahoma laws and rules in the conduct of their business in this state to the maximum extent authorized under federal law. No branch bank of an out-of-state bank shall be permitted to establish separate branch banks or limited service facilities, or to engage in any activity not permissible for a bank in this state.

K. Beginning June 1, 1996, a bank may establish a branch bank in any other state, or may acquire branch banks of an out-of-state bank which are located in any other state in accordance with the laws of the other state. The bank shall be required to follow all procedures and to obtain all approvals necessary to establish or acquire a branch bank under applicable Oklahoma law and any applicable rules as may be established by the Board. The bank shall file with the Department a copy of each application or notice filed with federal or other state regulatory authorities relating to the transaction at the same time the application or notice is filed with the federal or other state regulatory authorities. Upon consummation of the transaction, the bank shall have all of the powers under the applicable laws and regulations of the state in which each branch bank is located, subject to the duties and restrictions thereof. In addition to any regulation by bank and regulatory authorities in the state where a branch bank is located, each branch bank located outside of this state shall be subject to regulation by the Department as if the branch bank were located in this state and shall comply with the law of this state in the conduct of its banking business in such other state unless otherwise required or authorized under the laws of such other state.

SECTION 19. AMENDATORY 6 O.S. 1991, Section 502, as amended by Section 9, Chapter 183, O.S.L. 1993 (6 O.S. Supp. 1994, Section 502), is amended to read as follows:

Section 502. A. Citation - Purpose. This section may be cited as the "Bank Holding Company Section" and shall have for its purpose the maintenance of competitive services between banks by limiting the expansion of bank holding companies and similar organizations. It is deemed to be in the public interest that competition prevail in the banking system in the State of Oklahoma and to that end that the independence of unit banks be preserved. Further, it shall be the policy of the State of Oklahoma to oppose any attempt by any

bank holding company to acquire control of any bank located in this state if such acquisition would result in a monopoly or in an attempt to monopolize the business of banking in this state.

B. ~~Definitions. As used in this section the following terms shall have the following meanings:~~

1. ~~"Bank" means any national banking association or any state bank or banking association, whether organized under the laws of Oklahoma, the laws of another state, or the laws of the United States, authorized to engage in the banking business and located in the State of Oklahoma;~~

2. ~~"Company" means any corporation, association, partnership, business trust or similar organization, but shall not include any corporation, the majority of the shares of which are owned by the United States or by any state;~~

3. ~~"Banking company" means any bank;~~

4. ~~"Bank holding company" means any company which directly or indirectly owns or controls at least one bank;~~

5. ~~"Multi-bank holding company" means a company which directly or indirectly owns or controls two or more banks, two or more bank holding companies, or one or more of each;~~

6. ~~"Subsidiary" with respect to a specified bank holding company or multi-bank holding company means:~~

a. ~~any bank or company, twenty-five percent (25%) or more of whose voting shares is owned or controlled by such bank holding company or multi-bank holding company, or~~

b. ~~any bank or company, the election of a majority of whose directors is controlled in any manner by such bank holding company or multi-bank holding company, or~~

c. ~~any bank or company, twenty-five percent (25%) or more of whose voting shares is held by trustees for the benefit of the shareholders or members of such bank holding company or multi-bank holding company, or~~

~~d. any nonbanking company which a bank holding company or multi-bank holding company is allowed to acquire control or ownership of pursuant to the provisions of Sections 1841 et seq. of Title 12 of the United States Code Annotated;~~

~~7. For purposes of this section, a company has "direct or indirect ownership or control" of a bank or of another company if the company directly or indirectly, or acting through one or more persons, owns, controls, or has power to vote twenty-five percent (25%) or more of any class of voting securities of the bank or other company. For this purpose:~~

~~a. voting shares owned or controlled by any subsidiary of a company shall be deemed to be indirectly owned or controlled by said company, and~~

~~b. voting shares held or controlled directly or indirectly by trustees for the benefit of a company, the shareholders or members of a company, or employees of a company shall be deemed to be controlled by said company;~~

~~8. If the company controls in any manner the election of a majority of the directors or trustees of the bank or another company, such bank or other company shall be deemed to be directly or indirectly owned or controlled by said company; and~~

~~9. For purposes of this section, the company has control if the company has control under the provisions of the federal "Bank Holding Company Act of 1956" (Public Law 84-511) as amended or in accordance with the provisions of the regulations promulgated thereto by the Board of Governors of the Federal Reserve System; the procedures for determining the rebuttable presumption of control, under the terms of either said Act or the regulations promulgated thereto, shall be the same as provided in said Act or regulations.~~

~~C.~~ Multi-bank holding companies authorized. ~~From and after October 1, 1983,~~ a A company may be a multi-bank holding company and have direct or indirect ownership or control of two or more banks or bank holding companies, subject to the deposit limitation provided for in subsection ~~D~~ C of this section; provided that except as specifically permitted in this Code, all forms of direct or indirect ownership or control of banks, bank holding companies, and multi-bank holding companies by any ~~foreign~~ out-of-state bank or ~~foreign~~ out-of-state bank holding company shall be prohibited.

~~D.~~ C. Limitation. ~~From and after October 1, 1983,~~ ~~it~~ It shall be unlawful for a multi-bank holding company or an out-of-state bank or bank holding company to acquire direct or indirect ownership or control of any ~~financial~~ insured depository institution ~~insured by the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC), and National Credit Union Administration (NCUA)~~ and located in this state if ~~such~~ the acquisition results in ~~the multi-bank~~ any such holding company or bank having direct or indirect ownership or control of ~~banks~~ insured depository institutions located in this state, the total deposits of which at the time of ~~such~~ the acquisition exceed ~~eleven~~ twelve and twenty-five one-hundredths percent ~~(11%)~~ (12.25%) of the aggregate total amount of deposits of ~~all financial~~ insured depository institutions ~~insured by the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC), and National Credit Union Administration (NCUA)~~ located in this state as determined by the Commissioner on the basis of the most recent reports of such institutions ~~in Oklahoma~~ to their supervisory authorities which are available at the time of the proposed acquisition. ~~Multi-bank holding company acquisitions~~ Acquisitions of other multi-bank holding companies shall not be exempt from this limitation.

~~E.~~ D. Board of Directors requirements. The Board of Directors of each bank acquired by a multi-bank holding company shall have no less than a majority of the total membership of the Board of Directors of the bank from the local area in which the bank is located.

~~F.~~ E. Exceptions to deposit limitation. The deposit limitation provided for in subsection ~~D~~ C of this section shall not apply in the following circumstances:

1. Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in good faith in a fiduciary capacity, except where such shares are held for the benefit of the shareholders of such bank or such bank holding company; or

2. Control of a bank by reason of ownership or control of shares acquired by a bank or by a bank holding company in the regular course of securing or collecting a debt previously contracted in good faith. ~~The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation set forth in subsection D of this section for a period of five (5) years from the date of acquisition; or~~

~~3. The acquisition of direct or indirect ownership or control of a bank or bank holding company at the request of or in connection with the exercise of regulatory authority by the Commissioner, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Board of Governors of the Federal Reserve System for the purpose of preventing imminent failure of the bank or to protect the depositors thereof as determined by such authority in its sole discretion. The deposits of the acquired bank shall not be included in computing the appropriate deposit limitation as set forth in subsection D of this section for a period of five (5) years from the date of acquisition. The regulatory authority shall give acquisition priority to qualified purchasers or~~

~~bidders whose total deposit control at the time of acquisition does not exceed the appropriate deposit limitation as set forth in subsection D of this section.~~

~~G. F.~~ Limitation on acquisitions. A bank ~~for which the application for charter was filed, received, or granted by the appropriate authorizing agency after July 1, 1983, branch bank, savings association or savings association branch~~ shall not be acquired by a multi-bank holding company for a period of five (5) years after the bank, branch bank, savings association or savings association branch was granted its charter by the appropriate authorizing agency. ~~Provided however~~ However, the provisions of this subsection shall not prevent a multi-bank holding company from directly or indirectly acquiring a bank whose charter was granted for the purpose of purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital.

~~H. G.~~ De novo charter prohibition. A bank holding company or a multi-bank holding company shall not apply for or obtain a de novo charter except for the following purposes:

1. Purchasing the assets and assuming the liabilities of a bank closed by the Commissioner or the Comptroller of the Currency due to insolvency or impairment of capital; or

2. In the case of a bank holding company, merging with an existing bank subsidiary or subsidiaries of said bank holding company in accordance with the laws of this state or of the United States and subject to the following provisions:

- a. a bank holding company may apply for and obtain only one de novo charter for the purpose of merging with an existing bank subsidiary or subsidiaries pursuant to this subsection, and
- b. the de novo chartered bank shall be the survivor of any such merger, and

- c. the de novo chartered bank shall be the main banking office of the merged banks, and
- d. the deposit limitations provided for in subsections ~~D~~ C of this section and paragraph 1 of subsection D of Section 501.1 of this title shall be applicable to any such merger, and
- e. the de novo chartered bank shall have branching authority under subsections ~~B~~ A and ~~E~~ B of Section 501.1 of this title.

A company shall not be deemed to be a bank holding company for purposes of this section until it owns or controls a bank which has received a charter from the Banking Board of this state, the Comptroller of the Currency or a foreign country.

~~I.~~ H. Interim charters. A bank holding company or a multi-bank holding company may apply for and obtain an interim charter to organize an interim state bank for the purpose of facilitating the creation of a bank holding company, or acquiring or merging with an existing bank in accordance with the provisions of Section 502.1 of this title or the laws of the United States.

~~J.~~ I. Acquisition approval - Reports. A national bank in this state, bank holding company, or multi-bank holding company seeking to acquire a state bank or national bank in this state, or a nonbanking company that submits an application for approval of such acquisition to the Board of Governors of the Federal Reserve System pursuant to the provisions of Sections 1841 et seq. of Title 12 of the United States Code Annotated shall also submit a copy of such application to the Board.

~~K.~~ J. Jurisdiction - Appeals. The district court shall have jurisdiction to determine all questions of compliance with the provisions of this section, except such jurisdiction shall not apply to actions of the Board or proceedings before the Board conducted pursuant to the Banking Code. The decision of the district court

shall be appealable to the Supreme Court in the same manner as in other civil cases.

~~L.~~ K. Reports and examinations. Each bank holding company ~~and,~~ multi-bank holding company and out-of-state bank holding company which directly or indirectly owns, controls, or has power to vote twenty-five percent (25%) or more of the voting shares of one or more banks shall furnish a copy of the annual report of the operations of the ~~bank holding company or multi-bank holding company~~ which is submitted to the Federal Reserve Bank for each fiscal year to the Commissioner.

~~M.~~ L. Penalties. Any company which intentionally and willfully violates any provision of this section, upon conviction, shall be fined not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each day during which the violation continues. Any individual who intentionally and willfully participates in a violation of any provision of this section, upon conviction, shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned not more than one (1) year, or both such fine and imprisonment.

SECTION 20. AMENDATORY 6 O.S. 1991, Section 505, is amended to read as follows:

Section 505. A. Scope. The provisions of this section shall apply to the operations, activities, and acquisitions of ~~in-state~~ out-of-state banks, ~~Oklahoma~~ out-of-state bank holding companies, and ~~Oklahoma~~ out-of-state multi-bank holding companies acquired by a ~~foreign~~ bank holding company prior to July 1, 1987.

B. Prohibited transactions. The provisions of this section shall not be construed to permit any ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company which becomes a subsidiary of a ~~foreign~~ an out-of-state bank or ~~foreign~~ out-of-state bank holding company under the extraordinary acquisition provisions of 12 U.S.C. Section 1823(f) or any successor statute

thereto, or which was acquired by a ~~foreign~~ an out-of-state bank holding company prior to July 1, 1987, or which is otherwise deemed to be controlled by a ~~foreign~~ an out-of-state bank or ~~foreign~~ out-of-state bank holding company under the Oklahoma Banking Code of 1965, ~~Section 101 et seq. of this title,~~ or the federal Bank Holding Company Act of 1956, Section 1841 et seq. of Title 12 of the United States Code, as amended, to convert to a branch or to acquire direct or indirect ownership or control of any additional ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company, or to establish additional branches or facilities, except as otherwise provided for in ~~this section; provided, however~~ the Oklahoma Banking Code of 1965. However, the provisions of this paragraph shall not be applicable to any additional acquisitions of ~~an in-state~~ a bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company whose stock is held as stock acquired in the course of realizing upon a security interest which secured a debt previously contracted in good faith prior to the original acquisition by the ~~foreign~~ out-of-state bank holding company.

C. ~~Branching, acquisition, and conversion by subsidiaries. On and after July 1, 1987, any in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company which becomes a subsidiary of a foreign bank holding company under the extraordinary acquisition provisions of 12 U.S.C. Section 1823(f) or any successor statute thereto, or which was acquired by a foreign bank holding company prior to July 1, 1987, or which is otherwise deemed to be controlled by a foreign bank holding company under the Oklahoma Banking Code of 1965 or the federal Bank Holding Company Act of 1956, as amended, may acquire direct or indirect ownership or control of any additional in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company, establish additional branches or facilities, or convert to a branch of an in-state bank:~~

~~(1) if the State Banking Department has determined that the principal place of business of the foreign bank holding company has enacted and implemented legislation that qualifies that state as a reciprocal banking state within the purview of Section 506 of this title, or~~

~~(2) upon the expiration of a four-year period commencing on the date of acquisition by the foreign bank holding company.~~

~~Any conditions, restrictions, and requirements applicable to the bank subsidiaries of an Oklahoma bank holding company or Oklahoma multi-bank holding company in the state where the foreign bank holding company has its principal place of business which are more restrictive than those applicable to banks and bank holding companies in that state, if such state has enacted and implemented legislation authorizing the acquisition by an Oklahoma bank holding company or Oklahoma multi-bank holding company of banks or bank holding companies located in that state, shall apply to an in-state bank, Oklahoma bank holding company, or Oklahoma multi-bank holding company which is a subsidiary of such foreign bank holding company. All limitations and restrictions of the Oklahoma Banking Code of 1965 applicable to in-state banks, Oklahoma bank holding companies, and Oklahoma multi-bank holding companies shall apply to an in-state bank, Oklahoma bank holding company, or Oklahoma multi-bank holding company which is a subsidiary of a foreign bank holding company. The provisions of this subsection shall not be construed to prohibit a foreign bank holding company which acquired an in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company prior to July 1, 1987, from acquiring additional failed or failing banks pursuant to Section 506 of this title.~~

D. Divestiture. The Banking Board shall have the power to enforce the prohibitions provided for in subsection B of this

section by requiring divestiture and through the imposition of fines and penalties, the issuance of cease and desist orders, and such other remedies as are provided by law.

~~E.~~ D. Penalties. Any company which intentionally and willfully violates any provision of this section, upon conviction, shall be fined not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each day during which the violation continues. Any individual who intentionally and willfully participates in a violation of any provision of this section, upon conviction, shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned not more than one (1) year, or both such fine and imprisonment.

~~F.~~ E. Judicial review. Any final order of the Banking Board shall be appealable pursuant to the provisions of Section 207 of this title.

SECTION 21. AMENDATORY 6 O.S. 1991, Section 506, is amended to read as follows:

Section 506. A. Authorization for acquisition. ~~On and after July 1, 1987, a foreign~~ An out-of-state bank holding company, upon approval by the Federal Reserve Board, may acquire an unlimited number of ~~in-state~~ banks, ~~Oklahoma~~ bank holding companies and ~~Oklahoma~~ multi-bank holding companies, ~~including any in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company which could have been acquired under Section 505 of this title prior to July 1, 1987.~~ Any acquisition made pursuant to the provisions of this section may include assets and liabilities of the bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company and all branches and facilities thereof.

B. Prohibited transactions. The provisions of this section shall not be construed to:

~~(1)~~ 1. Permit any ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company which becomes a subsidiary of

~~a foreign bank holding company under the extraordinary acquisition provisions of 12 U.S.C. Section 1823(f) or any successor statute thereto, or which is otherwise deemed to be controlled by a foreign,~~
an out-of-state bank holding company under the Oklahoma Banking Code of 1965, Section 101 et seq. of this title, or the federal Bank Holding Company Act of 1956, Section 1841 et seq. of Title 12 of the United States Code, as amended, to convert to a branch or to acquire direct or indirect ownership or control of any additional ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company, or to establish additional branches or facilities, except as otherwise provided for ~~in this section~~ by the Oklahoma Banking Code of 1965; or

~~(2)~~ 2. Permit any ~~foreign~~ out-of-state bank holding company to acquire any ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company, except as otherwise permitted by this section.

C. Bid procedures. The bid procedure for the acquisition of a bank that has been closed due to insolvency or impairment of capital shall be as follows:

The Federal Deposit Insurance Corporation shall set minimum bid requirements for assets and liabilities of the bank subject to acquisition. The Federal Deposit Insurance Corporation's calculations and estimates of the minimum bid requirements shall be determinative. Bids for such assets and liabilities shall be solicited exclusively from ~~in-state~~ banks, ~~Oklahoma~~ bank holding companies, ~~Oklahoma~~ multi-bank holding companies, individuals and groups of individuals. The Federal Deposit Insurance Corporation may solicit such bids as are practicable from prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring assets and liabilities of the bank. If the minimum bid requirements are met by any of such entities, the bank shall be acquired by the bidder whose bid was

determined by the Federal Deposit Insurance Corporation, in its sole discretion, to be the least costly and most acceptable bid from among those submitted. If the minimum bid requirements are not met by any of such entities, the Federal Deposit Insurance Corporation shall extend the solicitation for bids to include ~~foreign~~ out-of-state bank holding companies determined by the Federal Deposit Insurance Corporation to be qualified bidders.

D. Approval of acquisition. No acquisition provided for in this section shall be permitted unless the approval of the Federal Reserve Board required pursuant to subsection A of this section:

~~(1)~~ 1. Includes, for all acquisitions, a finding that:

~~(a)~~ a. the ~~in-state~~ bank sought to be acquired or all of the bank subsidiaries of the ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company sought to be acquired have either been in existence and continuous operation for more than five (5) years or were chartered before May 7, 1986, and

~~(b)~~ b. notice of intent to acquire has been published in a newspaper of general paid circulation in the county or counties where the bank or banks to be acquired are located and that a notice of intent to acquire has been mailed by certified mail with return receipt requested to each person owning stock in the ~~in-state~~ bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company to be acquired, and

~~(c)~~ c. the reports required by the Federal Reserve Board in order to assess the ~~foreign~~ out-of-state bank holding company's record of meeting the credit needs of its entire community as required under the provisions of Section 2903 of Title 12 of the

United States Code have been placed on file as a matter of public record with the Oklahoma Banking Department, and

~~(d)~~ d. the ~~in-state~~ bank and, if acquired indirectly, its ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company immediately after the acquisition meets the capital adequacy guidelines of the appropriate federal financial supervisory agency; and

~~(2)~~ 2. Includes, for any acquisition of a majority of the voting shares, a finding that the acquisition has been approved by the board of directors and a majority of the voting shares of the ~~in-state~~ bank or of its parent ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company; ~~and~~.

~~(3)~~ ~~Subjects the acquisition to any conditions, restrictions, and requirements applicable to the acquisition by an Oklahoma bank holding company or Oklahoma multi-bank holding company of a bank or bank holding company in the state where the foreign bank holding company has its principal place of business which are more restrictive than those applicable to banks and bank holding companies in that state, if such state has enacted and implemented legislation authorizing the acquisition by an Oklahoma bank holding company or Oklahoma multi-bank holding company of banks or bank holding companies located in that state; and~~

~~(4)~~ ~~Except when the additional acquisition is of an in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company whose stock is held as stock acquired in the course of realizing upon a security interest which secured a debt previously contracted in good faith prior to the original acquisition by the foreign bank holding company, prohibits additional branching and further acquisitions by an in-state bank, Oklahoma bank holding~~

~~company or Oklahoma multi-bank holding company which is a subsidiary of a foreign bank holding company unless and until the earlier of:~~

- ~~(a) such time as the Federal Reserve Board determines that the state in which the foreign bank holding company has its principal place of business has enacted and implemented legislation authorizing Oklahoma bank holding companies or Oklahoma multi-bank holding companies to acquire banks and bank holding companies in that state on a reciprocal basis, or~~
- ~~(b) the expiration of a four-year period commencing on the date of acquisition by the foreign bank holding company.~~

~~E. Branching, acquisition, and conversion by subsidiaries. On and after July 1, 1987, any in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company which becomes a subsidiary of a foreign bank holding company under the extraordinary acquisition provisions of 12 U.S.C. Section 1823(f) or any successor statute thereto, or which is otherwise deemed to be controlled by a foreign bank holding company under the Oklahoma Banking Code of 1965 or the federal Bank Holding Company Act of 1956, as amended, may acquire direct or indirect ownership or control of any additional in-state bank, Oklahoma bank holding company or Oklahoma multi-bank holding company, establish additional branches or facilities, or convert to a branch of an in-state bank:~~

~~(1) if the State Banking Department has determined that the principal place of business of the foreign bank holding company has enacted and implemented legislation that qualifies that state as a reciprocal banking state within the purview of this section, or~~

~~(2) upon the expiration of a four-year period commencing on the date of acquisition by the foreign bank holding company.~~

~~F. E. Limitations and restrictions. All limitations and restrictions of the Oklahoma Banking Code of 1965 applicable to~~

~~in-state~~ banks, ~~Oklahoma~~ bank holding companies and ~~Oklahoma~~ multi-bank holding companies shall apply to ~~an in-state~~ a bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company which becomes a subsidiary of ~~a foreign~~ an out-of-state bank holding company and to such ~~foreign~~ out-of-state bank holding company. In addition, any ~~in-state~~ bank which becomes a subsidiary of ~~a foreign~~ an out-of-state bank holding company shall maintain current reports showing the ~~in-state~~ bank's record of meeting the credit needs of its entire community as required by the ~~in-state~~ bank's federal financial supervisory agency under Section 2903 of Title 12 of the United States Code on file as a matter of public record with the Oklahoma Banking Department. The provisions of this subsection shall not be construed to prohibit the acquisition by ~~a foreign~~ an out-of-state bank holding company of all or substantially all of the shares of ~~an in-state~~ a bank organized solely for the purpose of facilitating the acquisition of ~~an in-state~~ a bank or all of the bank subsidiaries of ~~an Oklahoma~~ a bank holding company or ~~Oklahoma~~ multi-bank holding company which have either been in existence and continuous operation for ~~more than~~ at least five (5) years ~~or were chartered before May 7, 1986,~~ if the acquisition has otherwise been approved pursuant to this subsection. Nor shall the provisions of this subsection be construed to prohibit ~~a foreign~~ an out-of-state bank holding company which acquires ~~an in-state~~ a bank, ~~Oklahoma~~ bank holding company or ~~Oklahoma~~ multi-bank holding company under this section from additional acquisitions under this section, if such acquisitions would otherwise be permitted.

G. F. Applicable law. Any ~~foreign~~ out-of-state bank holding company which controls ~~an in-state~~ a bank, ~~an Oklahoma~~ a bank holding company or ~~Oklahoma~~ multi-bank holding company shall be subject to laws of this state and rules of its agencies relating to the acquisition, ownership, and operation of ~~in-state~~ banks,

~~Oklahoma~~ bank holding companies and ~~Oklahoma~~ multi-bank holding companies.

~~H.~~ G. Regulatory supervision. The Banking Board may enter into cooperative agreements with other bank regulatory agencies to facilitate the regulation of banks and bank holding companies doing business in this state. The Bank Commissioner may accept reports of examinations and other records from such other agencies in lieu of conducting its own examinations of banks controlled by ~~foreign~~ out-of-state bank holding companies. The Board may take any action jointly with other regulatory agencies having concurrent jurisdiction over banks and bank holding companies ~~doing business in this state~~ or may take such actions independently in order to carry out its responsibilities.

~~I.~~ H. Divestiture. The Banking Board shall have the power to enforce the prohibitions provided for in subsection B of this section by requiring divestiture and through the imposition of fines and penalties, the issuance of cease and desist orders, and such other remedies as are provided by law.

~~J.~~ I. Penalties. Any company which intentionally and willfully violates any provision of this section, upon conviction, shall be fined not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) for each day during which the violation continues. Any individual who intentionally and willfully participates in a violation of any provision of this section, upon conviction, shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned not more than one (1) year, or both such fine and imprisonment.

~~K.~~ J. Judicial review. Any final order of the Banking Board shall be appealable pursuant to the provisions of Section 207 of this title.

SECTION 22. AMENDATORY 6 O.S. 1991, Section 1416, is amended to read as follows:

Section 1416. A. ~~Unless otherwise provided, as used in this section:~~

~~1. "Bank" means any institution that accepts deposits in Oklahoma that are insured pursuant to the provisions of the Federal Deposit Insurance Act, as amended.~~

~~2. "Bank holding company" means any company which is a bank holding company pursuant to the provisions of the federal Bank Holding Company Act of 1956, as amended.~~

~~3. "Company" means the entity defined in Section 2(b) of the federal Bank Holding Company Act of 1956.~~

~~4. "Control" means control as defined in Sections 2(a), (2) and (3) of the federal Bank Holding Company Act of 1956, as amended, except that the reference therein to "the Board" shall be deemed to refer to the Commissioner.~~

~~B.~~ No bank holding company shall control a bank unless the bank is one such as is defined in Section 2(c) of the federal Bank Holding Company Act of 1956, as amended.

~~C.~~ B. No company that is not a bank holding company shall control a bank.

~~D.~~ C. In addition to other remedies provided for by law, the Commissioner may enforce the provisions of this section by:

1. Injunction; or
2. Cease and desist order; or
3. Fine.

SECTION 23. AMENDATORY 6 O.S. 1991, Section 1417, as last amended by Section 9, Chapter 157, O.S.L. 1994 (6 O.S. Supp. 1994, Section 1417), is amended to read as follows:

Section 1417. A. ~~Definitions. As used in this section:~~

~~1. "Bank" means any person having a state, national or foreign bank charter.~~

~~2. "Confusingly similar name" means:~~

- ~~a. as applied to the name of any bank, a name which is identical to that of any other bank located within the State of Oklahoma, or a name which:~~
- ~~(1) contains one or more of the following words with or without the words "State," "National," or "Trust": American, Central, Citizens, City, Commerce, Commercial, Community, Exchange, Farmers & Merchants, First, Guaranty, Oklahoma Peoples, Security or United;~~
 - ~~(2) does not contain a geographical name (other than "Oklahoma") descriptive of the bank's immediate location (street, town, city, county or other local geographical name);~~
 - ~~(3) does not contain other unique or clearly distinguishing words or marks; and~~
 - ~~(4) is not a federally registered trade name, trademark or service mark owned by or licensed to the particular bank; or~~
- ~~b. as applied to the name of any person not a bank, a name which is confusingly similar in spelling or wording or sound to the name of any bank located anywhere within the State of Oklahoma, if such name would tend to suggest falsely to the public that the person is the bank or is affiliated with the bank, directly or indirectly; provided, however, nothing contained in this subsection shall prohibit the use of a similar name by a corporation which is in a relationship to the bank of parent, subsidiary, brother-sister corporation or other commonly controlled company.~~

~~c. The Board shall promulgate rules and regulations which govern the use of "confusingly similar names" as defined in subparagraph a of this paragraph.~~

3. ~~"Local media" means:~~

~~a. any newspaper, radio station or television station with its main office located in the same city or town in which a particular bank's main office is located; and~~

~~b. other means or media of advertising, including without limitation any outdoor signage on the bank's premises, billboards, bulk mailings, and other solicitations to persons who are not customers of the bank, but only to the extent that any such advertising is strictly limited in geographical location or distribution to the same city or town (including the immediate surrounding unincorporated rural area) where the particular bank's main office is located.~~

~~B.~~ It is unlawful for any bank or out-of-state bank having a confusingly similar name to advertise its name in Oklahoma (including without limitation by means of outdoor signage, newspaper, radio, television, billboards, bulk mailings, and other solicitations to persons who are not customers of the bank) unless said advertising also conspicuously identifies the city or town where that bank has its main office; provided, however, this subsection shall not apply to a bank's advertising through local media.

~~C.~~ B. It is unlawful for any bank having a full legal name which is not a confusingly similar name to use a shortened name for purposes of advertising within Oklahoma (including without limitation on outdoor signage, newspaper, radio, television, billboards, bulk mailings, and other solicitations to persons who are not customers of the bank) if that shortened name would be a

confusingly similar name and if such advertising does not also conspicuously identify the city or town where that bank has its main office; provided however, this subsection shall not apply to a bank's advertising through local media.

~~D.~~ C. It shall be unlawful for any bank which acquires another bank or other financial institution for one or more of its offices or branches, by merger, purchase and assumption or otherwise, to continue to use the former name of the acquired institution or office, or similar name, for more than six (6) months after the date of acquisition, either on outdoor signage or in other advertising, unless such name is the legal name of the resulting bank; provided, however, nothing contained herein shall prohibit an acquiring bank from using a variation of the former name as a branch title if such variation is at all times used only in combination with the name of the acquiring bank (including the town or city where that bank has its main office) and the word "branch" on any outdoor signage or in other advertising.

~~E.~~ D. It shall be unlawful for any person which is not a bank to use or advertise a confusingly similar name within the State of Oklahoma.

~~F.~~ E. The Commissioner may issue an order in accordance with Section 204 of this title to any Oklahoma chartered bank or bank registered pursuant to Section 104 of this title, ordering such bank to cease violating the provisions of this section. This remedy shall be in addition to and not exclusive of the remedy provided in subsection ~~G.~~ F. of this section.

~~G.~~ F. Whenever any bank or other person shall use or advertise a name in violation of this section, the district court from which lawful service is obtained shall, upon suit by the Commissioner or any injured person, issue an injunction restraining such use or advertisement. Provided, that the Commissioner shall be deemed to be a necessary party to any suit brought pursuant to this section

and any suit brought by the Commissioner pursuant to this section shall be properly brought as to both jurisdiction and venue, when brought in a county where the office of the Commissioner is located.

~~H.~~ G. Advertisements which were in conformance with this section prior to April 29, 1991, but are not now in conformance with subsections ~~B~~ A and ~~C~~ B of this section will not be considered to be in violation of the law for a six-year period beginning April 29, 1991. This subsection shall not be interpreted to allow any bank to begin the advertisement of a confusingly similar name which it had not previously used or advertised prior to April 29, 1991, but shall only serve to protect the advertisement of such names as are in lawful use as of April 29, 1991.

SECTION 24. REPEALER 6 O.S. 1991, Section 504, is hereby repealed.

SECTION 25. This act shall become effective November 1, 1995."

Passed the House of Representatives the 11th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate