ENGROSSED HOUSE
BILL NO. 2214

By: Bryant, Thornbrugh and Breckinridge of the House

and

Easley of the Senate

An Act relating to banks and trust companies; amending Section 3, Chapter 295, O.S.L. 1992 (6 O.S. Supp. 1995, Section 424), which relates to origination of loans at locations other than main or branch office; allowing deposit accounts to originate at locations other than main office or branch office of bank; providing restrictions; amending 6 O.S. 1991, Section 501.1, as last amended by Section 12, Chapter 36, O.S.L. 1995 (6 O.S. Supp. 1995, Section 501.1), which relates to branch banking; permitting certain acquiring bank to establish certain unused branch banking rights; providing limitation on location of certain branches; amending 6 O.S. 1991, Section 502, as amended by Section 9, Chapter 183, O.S.L. 1993 (6 O.S. Supp. 1995, Section 502), which relates to bank holding companies; modifying limitation on bank holding companies regarding acquisition of certain banks; providing for acquisition of certain bank by a newly formed bank holding company; providing for certain banks to act as agent for certain affiliate banks; providing that agent bank shall not be a branch of affiliate bank; requiring

agency relationship to be consistent with certain banking practices and regulations; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 295, O.S.L. 1992 (6 O.S. Supp. 1995, Section 424), is amended to read as follows:

Section 424. Subject to rules ~~and regulations~~ promulgated by the Board, a state bank may utilize employees of the bank to originate loans <u>or originate deposit accounts, or both,</u> at locations other than the main office or a branch office of such bank, provided that the loan decision is made and the loan is funded at the main office or a branch office of the bank <u>and provided that no deposits shall be accepted or received at the deposit origination office</u>. No other business shall be carried on at or from a loan production <u>or deposit origination</u> office.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 501.1, as last amended by Section 12, Chapter 36, O.S.L. 1995 (6 O.S. Supp. 1995, 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; and

7. "Mobile facility" means any place of business separated from the main office or a branch office of a bank at which deposits are received, checks paid, or money lent and which is designed to be moved, picked-up, rolled, pulled or driven. A mobile facility is prohibited from operation except for use at an institution of higher education as set forth in subsection C of this section.

B. Authorization to establish branches.

1. Any bank may establish and perform any banking function at no more than two branches 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 Banking Board nor the Comptroller of the Currency shall grant a certificate for any branch unless it is more than three hundred thirty (330) feet from any main bank or branch in counties with a population of five hundred thousand (500,000) or

more according to the latest Federal Decennial Census unless the branch 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 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 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 within such city or town for a period of five (5) years after the acquisition and operation of the branch.

C. 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. A bank or savings association may use a mobile facility for the purpose of opening accounts and accepting deposits as described in this subsection. Except as provided in this subsection, a mobile facility shall not be used for any other purpose.

D. Authorization to branch by acquisition.

1. Subject to the limitations in subsection E of this section, any bank may acquire and operate as branches of the bank at which any banking function may be performed an unlimited number of banks or savings associations or bank branches 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.

2. If a bank or savings association acquired pursuant to this subsection had not established any or all of the 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.

3. If a bank acquired pursuant to this subsection had not established any or all of the de novo branches which would have been authorized under subsection B of this section, the acquiring bank may establish any or all of the branches at any time after the acquisition to the same extent that the acquired bank could have established the branches had the bank remained a separately chartered bank. However, the location of any post-acquisition branches shall be limited to the locations where the branches could have been established by the acquired bank. This subsection shall be applicable to any acquisition of a bank, whether occurring before or after the effective date of this paragraph.

E. Deposit limitation.

1. It shall be unlawful for any bank to acquire any other bank or savings association in Oklahoma or any portion of its assets if such acquisition would result in the bank having direct or indirect ownership or control of more than eleven percent (11%) of the aggregate deposits of all financial 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. Authorized acquisitions. Subject to the limitations in subsection E of this section, a bank for which the application for charter was granted after December 31, 1986, shall not be acquired by a bank and operated as a branch until such bank has been in existence and continuous operation for a period of more than five

(5) years. Provided, however, the provisions of this subsection shall not prevent a bank from acquiring a bank to be operated as a branch 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. Certificate to establish and operate a branch.

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

2. The application for a certificate to establish or operate a branch 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 the investigation of the Commissioner to the Board. Notice of hearing on the application shall be given as required by any rule by the Board. 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.

H. 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. Branch relocations. It is the policy of the Legislature of Oklahoma that branches, whether de novo or by acquisition, or main offices of banks state or national, not be permitted to be relocated in such a manner which would result in one or more branches in locations which could not have been lawfully established there to

begin with, except as specifically permitted herein. A branch may be relocated:

1. De novo. For a branch which was established as a de novo branch and not a branch by acquisition, on property owned or leased by the bank:

a. within the corporate city limits where the main bank is located, or

b. within twenty-five (25) miles of the main bank if the branch will be located in a city or town which has no state or national bank located in said city or town. However, if an application for a bank charter has been filed, the State Banking Board or the Office of the Comptroller of the Currency shall give priority to the charter application if filed prior to the filing of the branch application;

2. By acquisition. A branch which resulted from the acquisition of a branch from another bank or savings and loan or of a main office or branch thereof, which was converted to a branch, hereinafter referred to as the "acquired branch". Application may be made to relocate the acquired branch to a location on property owned or leased by the bank:

a. within the corporate city limits where the acquired branch is located, or

b. to a location within twenty-five (25) miles of the acquired branch if the relocation is to be in a city or town in which no state or national bank is located. However, if an application for a bank charter has been filed, the State Banking Board or the Office of the Comptroller of the Currency shall give priority to the charter application if filed prior to the branch application; or

3. By relocation of a main office.

a. De novo branches of a main office may not remain or be established in locations or numbers which are not within the requirements of subsection B of this section by reason of relocation of the main office.

b. Relocation of a main office which would result in one or more de novo branches no longer being within the requirements of subsection B of this section, will require with regard to any such branch:

(1) relocation of any such branch to a location within the requirements of subsection B of this section for the newly relocated main office,

(2) divestiture of any such branch, or

(3) closing of any such branch.

The preceding requirements must be accomplished before the date the relocated main office opens for business.

J. The Board may by rule establish a procedure whereby the Commissioner may grant approval and issue the certificate to establish and operate or relocate a branch without a hearing before the Board. The procedure shall include criteria set by the Board to be applied by the Commissioner in the consideration of the application.

K. 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.

SECTION 3. AMENDATORY 6 O.S. 1991, Section 502, as amended by Section 9, Chapter 183, O.S.L. 1993 (6 O.S. Supp. 1995, 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 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 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 bank or foreign bank holding company shall be prohibited.

D. Limitation. From and after October 1, 1983, it shall be unlawful for a multi-bank holding company to acquire direct or indirect ownership or control of any financial 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 acquisition results in the multi-bank holding company having direct or indirect ownership or control of banks located in this state, the total deposits of which at the time of such acquisition exceed eleven percent (11%) of the aggregate deposits of all financial institutions insured by the Federal Deposit Insurance Corporation (FDIC), Federal Savings and Loan Insurance Corporation (FSLIC), and National Credit Union Administration (NCUA) 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 of other multi-bank holding companies shall not be exempt from this limitation.

E. 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. Exceptions to deposit limitation. The deposit limitation provided for in subsection D 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. 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, shall not be acquired by a bank holding company or a multi-bank holding company for a period of five (5) years. Provided however, the provisions of this subsection shall not prevent a bank holding company or a multi-bank holding company from directly or indirectly acquiring a bank whose charter was granted for the purpose of ~~purchasing~~:

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

Nothing in this subsection shall be construed to preclude the acquisition of a bank that has been chartered for less than five (5) years by a newly formed bank holding company which does not own or control, directly or indirectly, another bank.

H. 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~~ subsection D of this section and subsection E 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 and ~~C~~ D 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. 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. 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. 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. Reports and examinations. Each bank holding company and multi-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. 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 426 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for any other bank owned or controlled by the same bank holding company.

B. Despite any other provision of law, a bank acting as an agent in accordance with subsection A of this section for an affiliate shall not be considered a branch of the affiliate.

C. An agency relationship between subsidiary banks pursuant to subsection A of this section shall be on terms that are consistent with safe and sound banking practice and all applicable regulations of any appropriate bank regulatory agency.

SECTION 5. This act shall become effective November 1, 1996.

Passed the House of Representatives the 5th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate