

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1845

By: Hamilton and Settle of
the House

and

Haney and Hobson of the
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to banks and trust companies; amending 6 O.S. 1991, Section 1202, as last amended by Section 94 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, which relates to possession of bank by State Banking Commissioner; deleting certain language; amending Sections 39 and 40 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, which relates to bank stock; modifying statutory citations; amending 6 O.S. 1991, Section 1411, as amended by Section 110 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, which relates to unlawful payment of penalties and judgments; modifying statutory reference; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 1202, as last amended by Section 94 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1202. A. Possession of Commissioner - Hearing. Except as otherwise provided in this Code, only the Commissioner may take possession of a bank, if, after a hearing before the Board, the Board shall find:

1. That it is insolvent;

2. The bank's capital is impaired, and has not been corrected as provided in Section 220 of this title, or is otherwise in an unsound condition;

3. The bank's business is being conducted in an unlawful or unsound manner;

4. The bank is unable to continue normal operations; or

5. That examination of the bank has been obstructed or impeded.

B. Notice of possession - Powers and duties of Commissioner - Tolling of limitations.

1. The Commissioner shall take possession by posting upon the premises a notice reciting that the Commissioner is assuming possession pursuant to this Code and the time, not earlier than the posting of the notice, when the Commissioner's possession shall be deemed to commence. A copy of the notice shall be filed in the district court in the county in which the institution is located. Provided, if the Federal Deposit Insurance Corporation is appointed as liquidator pursuant to the provisions of Section 1205 of this title, such notice shall not be filed. The Commissioner shall notify the Federal Reserve Bank of the district of taking possession of any state bank which is a member of the Federal Reserve System, and shall notify the Federal Deposit Insurance Corporation of taking possession of any state bank which is a member of the Federal Deposit Insurance Corporation.

2. When the Commissioner has taken possession of a state bank, the Commissioner shall be vested with the full and exclusive power of management and control, including the power to continue or to discontinue the business, to stop or to limit the payment of its obligations, to employ any necessary assistants, including legal counsel, to execute any instrument in the name of the bank as Commissioner of Banking in charge of liquidation, to commence, defend and conduct in its name any action or proceeding to which it may be a party, to enforce the liabilities of the stockholders, officers and directors, to terminate the Commissioner's possession by restoring the assets of the bank to its board of directors and to reorganize or liquidate the bank in accordance with the Code.

As soon as practicable after taking possession the Commissioner shall make an inventory of the assets and file a copy thereof with the court in which the notice of possession was filed.

3. When the Commissioner is in possession and while the Commissioner's possession continues there shall be a postponement until six (6) months after such taking, of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which a review must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

4. The Commissioner shall, within two (2) days after taking possession, call and give five (5) days' notice by mail to stockholders of the bank at their last-known address of a special meeting for the purpose of allowing the stockholders to designate the board of directors as the representative of the stockholders or to allow the election of a new board of directors if the stockholders should so determine. Such board of directors are authorized to represent the stockholders in the liquidation procedures herein, to observe, assist and protect the interest of the stockholders.

- a. The board of directors of the bank are authorized to bring all necessary legal actions for and on behalf of the stockholders and to pay attorney's fee in a reasonable amount, if such action benefits the liquidating account of the insolvent bank.
- b. The board of directors, as authorized by the stockholders, shall represent the stockholders in the district court in which the notice of possession has been filed by the Commissioner, as to all matters affecting the bank.

5. The corporate entity of the bank shall continue to exist and may function for all purposes, except as to the assets of and activities as a banking institution under a charter, and may function to assist the Commissioner or to protect the stockholders' interest in the assets of the liquidating account.

C. Omission of hearing - Application to vacate possession - Liquidation - Notice thereof - Objection - Bond of Commissioner - Reorganization - Immediate liquidation of state banks.

1. If in the opinion of the Commissioner an emergency exists which may result in serious losses to the depositors, the Commissioner may take possession of a state bank without a prior hearing. Within ten (10) days after the Commissioner has taken possession any interested person may file an application with the Board for an order vacating such possession. The Board shall grant the application if it finds that the action of the Commissioner was unwarranted or without sufficient cause.

2. If the Commissioner shall determine to liquidate the bank, the Commissioner shall give such notice of the Commissioner's determination to the directors, stockholders, depositors and creditors as the Board may prescribe. Such notice shall be by restricted delivery to the directors and stockholders at their last-known address as shown on the records of the bank and notice to the depositors and creditors shall be published in a legal newspaper published in the city or town where such bank is located, or if there be no legal newspaper published in such city or town then in a legal newspaper having the greatest paid circulation within such city or town. Any objection to such determination by a person directly affected shall be filed with the Board within ten (10) days after such notice is mailed or published. Unless within ten (10) days thereafter the Board issues an order staying the liquidation or unless the Board directs the Commissioner to tender to the Federal Deposit Insurance Corporation the appointment as liquidator under this section, the Commissioner shall proceed to liquidate the institution, upon first providing a bond executed by some surety company authorized to do business in this state, running to the people of the State of Oklahoma, which meets with the approval of the Board, for the faithful discharge of the duties of the Commissioner, in connection with such liquidation and the accounting for all monies coming into the hands of the Commissioner. The cost of such bond shall be paid from the assets

of the bank. Suit may be maintained on such bond by any person injured by a breach of conditions thereof.

3. After the Commissioner shall have taken possession of any bank which is subject to the provisions of this act, the stockholders thereof may repair its credit, restore or substitute its reserves, and otherwise place it in condition so that it is qualified to do a general banking business as before it was taken possession of by the Commissioner; but such bank shall not be permitted to reopen its business until the Commissioner, after a careful investigation of its affairs, is of the opinion that its stockholders have complied with the laws, that the bank's credit and funds are in all respects repaired, and its reserve restored or sufficiently substituted, and that it should be permitted again to reopen for business; whereupon the Commissioner is authorized to issue written permission for reopening of the bank in the same manner as permission to do business is granted after the incorporation thereof, and thereupon the bank may be reopened to do a general banking business.

4. If the Commissioner determines to reorganize the bank or if the Board, after staying its liquidation, orders such reorganization, the Commissioner, after according a hearing to all interested persons, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of the claim of the depositor or creditor in full under the plan, together with notice that, unless within fifteen (15) days the plan is disapproved in writing by persons holding one-third (1/3) or more of the aggregate amount of such claims, the Commissioner will proceed to effect the reorganization. A department, agency, or political subdivision of this state holding a claim which will not be paid in full is authorized to participate as any other creditor.

5. Notwithstanding any other provision of this chapter, the Commissioner, upon taking possession of a state bank, may immediately proceed to liquidate the bank, without giving prior notice to the directors, stockholders, depositors and creditors,

if it is determined by order of the court in which notice of possession has been filed that:

- a. the actions of the Commissioner have the approval of the Board, and
- b. the immediate liquidation of the bank is necessary to protect the interests of its depositors and is otherwise in the public interest.

In the proceeding with the immediate liquidation of the bank as aforesaid, the Commissioner, in order to facilitate the assumption of the deposit liabilities of the closed bank by another bank, may borrow moneys from the Federal Deposit Insurance Corporation and pledge some or all of the assets of the closed bank as security for such borrowing or the Commissioner may sell some or all of the assets of the closed bank to the Federal Deposit Insurance Corporation.

6. When the Commissioner has taken possession of a state bank for the purpose of liquidation, neither the ten-day periods provided by paragraphs 1 and 2 of subsection C of this section nor the pendency of any proceeding for review of the Commissioner's action shall operate to defer, delay, impede or prevent the payment by the Federal Deposit Insurance Corporation of the insured deposits in the bank.

The Commissioner shall make available to the Federal Deposit Insurance Corporation such facilities in or of the ~~the~~ bank and such books, records and other relevant data of the ~~the~~ bank as may be necessary or appropriate to enable the Federal Deposit Insurance Corporation to pay the insured deposits as aforesaid, and the Federal Deposit Insurance Corporation, its directors, officers, agents and employees, and the Commissioner, the agents and employees of the Commissioner, shall be free from any liability to the ~~the~~ bank, its directors, stockholders and creditors, for any action taken in connection herewith.

D. Execution upon bank assets prohibited - Vacation of liens and transfer of assets.

1. No judgment, lien or attachment shall be executed upon any asset of the bank while it is in the possession of the

Commissioner. Upon the election of the Commissioner in connection with a liquidation or reorganization:

- a. any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the bank during the Commissioner's possession or within four (4) months prior to commencement thereof shall be vacated and voided except liens created by the Commissioner while in possession, and
- b. any transfer of an asset of the bank made after or in contemplation of its insolvency with intent to effect a preference shall be voided.

2. The provisions of this subsection shall not be construed to authorize the Commissioner to vacate or void any lien or attachment obtained by a Federal Reserve Bank upon any asset of the bank or to void any transfer of an asset of the bank to such Federal Reserve Bank.

E. Power to borrow money and pledge bank's assets. With the approval of the Board, the Commissioner may borrow money in the name of the bank and may pledge its assets as security for the loan.

F. Commissioner's expenses - Payable out of bank's assets. All necessary and reasonable expenses of the Commissioner's possession of a bank and of its reorganization or liquidation shall be defrayed from the assets thereof, including but not limited to any necessary fees or other expenses incurred through the office of the county clerk. Compensation to liquidating agents and employees must not be in excess of amounts which such individuals would be entitled to in their regular employment or for like services rendered within the area of the insolvent bank, and in no event shall a liquidating agent be paid a monthly salary or wage from the assets of the bank in excess of the amount of the monthly salary of the highest-paid official of the insolvent bank. The attorney's fee allowed to an attorney representing the liquidating agent shall not exceed the amount for like services in regular employment of an attorney in the area of the bank.

SECTION 2. AMENDATORY Section 39 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 39. Any bank or trust company, with the written approval of the Commissioner and by majority vote of the outstanding voting stock, may by proper amendment to its certificate of incorporation authorize an increase in the common stock of the bank in the category of authorized but unissued stock. Such authorized but unissued stock may be issued from time to time to employees of the bank pursuant to a stock option or stock purchase plan adopted in accordance with the provisions of Section ~~41~~ 40 of this act or in exchange for convertible preferred stock or convertible capital debentures in accordance with the terms and provisions of such securities. Authorized but unissued stock may also be issued from time to time for such other purposes and considerations as may be approved by the board of directors of the bank and by the written approval of the Commissioner.

SECTION 3. AMENDATORY Section 40 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 40. A. Scope and application. Any bank or trust company may grant options to purchase, sell or enter into agreements to sell shares of its capital stock to its employees, for a consideration of not less than one hundred percent (100%) of the fair market value of the shares on the date the option is granted, or, if pursuant to a stock purchase plan, one hundred percent (100%) of the fair market value on the date the purchase price is fixed, pursuant to the terms of an employee stock option plan or employee stock purchase plan which has been adopted by the board of directors of the bank and approved by the holders of at least a majority of the outstanding shares of the bank entitled to vote and by the Commissioner. Stock options issued hereunder shall not extend beyond a period of ten (10) years from date of issuance and shall otherwise qualify as stock options under the provisions of the Internal Revenue Code of 1954, as it may be amended from time to time.

B. Source of shares. Shares issued to employees pursuant to this section may be authorized but unissued stock which has been authorized by stockholders in accordance with the procedures outlined in Section ~~40~~ 39 of this act.

SECTION 4. AMENDATORY 6 O.S. 1991, Section 1411, as amended by Section 110 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 110. It shall be unlawful for a bank or trust company to pay a fine or penalty imposed by law upon any other person or any judgment against such person or to reimburse directly or indirectly any person by whom such fine, penalty or judgment has been paid, except in settlement of its own liability or in connection with the acquisition of property against which such judgment is a lien, or as provided in ~~Section 69 of this act~~ Section 68 of Enrolled House Bill No. 2173 of the 1st Session of the 46th Oklahoma Legislature.

SECTION 5. This act shall become effective July 1, 1997.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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