ENGROSSED HOUSE
BILL NO. 2894

By: Weaver of the House

and

Mickle of the Senate

An Act relating to banks and trust companies; creating the Multistate Trust Institutions Act; creating short title; expressing legislative intent; defining terms; authorizing State Banking Commissioner to promulgate rules; providing for severability; authorizing certain companies to act as a fiduciary; setting forth certain activities which do not require a charter; authorizing state trust institution to act as a fiduciary and conduct trust business; permitting out-of-state trust institution to conduct business in state; permitting registration of name; authorizing state trust companies or banks to perform or operate trust business; permitting state trust institutions to engage business at branch locations; limiting certain business at certain representative trust office; limiting business of state bank or state trust company at certain offices; requiring principal office; stating that certain officers are agents of the trust company; permitting change in principal office and providing procedure therefor; allowing state trust institutions to establish certain offices and including procedure therefor; permitting additional office locations and

providing procedure therefor; permitting certain out-of-state offices and prescribing procedure for establishing; permitting an out-of-state trust institution to act as a fiduciary; allowing out-of-state trust institution to establish or acquire office and providing notice thereof; setting forth conditions for approval of establishment or acquisition of office; permitting establishment of additional offices; prohibiting out-of-state trust institution from acting as fiduciary; permitting the acquisition or establishment of representative trust office and providing for notice and review thereof; authorizing Banking Commissioner to examine certain offices; authorizing periodic reports by Banking Commissioner; permitting Banking Commissioner to enter into certain agreements, contracts, and joint examinations or enforcement actions; allowing certain supervisory and examination fees; describing certain enforcement actions the Banking Commissioner may determine; requiring notice of a merger, consolidation, or closing; creating the State Trust Institution Charter Modernization Act; stating short title; expressing purposes of act; referring to definitions; authorizing the designation of trust institution as a fiduciary; designating governing law regarding certain agreement and fiduciary investment standards; enabling delegation of certain functions under certain circumstances; allowing trustee to hire and compensate an affiliate; describing compensation arrangement between client and trustee; requiring disclosure of

certain conflicts of interests; permitting trust institution to purchase assets of another state trust company; exempting certain liability; requiring acquisition application; authorizing Banking Commissioner to approve purchase under certain conditions; requiring private trust companies to comply with act; stating exemptions for private trust companies; defining terms; permitting Banking Commissioner to examine or investigate private trust companies; permitting adoption of rules; setting forth procedure and requirements for private trust company to seek exemption; permitting private trust company to convert to public trust company and establishing procedure therefor; authorizing Banking Commissioner to deny conversion under certain circumstances; amending 6 O.S. 1991, Section 1109, as last amended by Section 90, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1997, Section 1109), which relates to sale or purchase of bank assets; modifying party responsible for mailing certain order; repealing 18 O.S. 1991, Sections 476, 477 and 478, which relate to fiduciary powers of banking associations; 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 1701 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Multistate Trust Institutions Act".

B. It is the express intent of this act to permit banks and other depository institutions, foreign banks and trust companies to engage in the trust business on a multistate and international basis to the extent consistent with the safety and soundness of the trust institutions engaged in a trust business in this state and the protection of consumers, clients and other customers of such trust institutions.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1702 of Title 6, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity;

2. "Act as a fiduciary" or "acting as a fiduciary" means to:

a. accept or execute trusts, including to:

(1) act as trustee under a written agreement,

(2) receive money or other property in its capacity as trustee for investment in real or personal property,

(3) act as trustee and perform the fiduciary duties committed or transferred to it by order of a court of competent jurisdiction,

(4) act as trustee of the estate of a deceased person, or

(5) act as trustee for a minor or incapacitated person,

b. administer in any other fiduciary capacity real or tangible personal property, or

c. act pursuant to order of a court of competent jurisdiction as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

3. "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease or insure, safekeep or otherwise manage the property;

4. "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company;

5. "Bank" has the meaning set forth in 12 U.S.C., Section 1813(h). "Bank" shall not include any "foreign bank" as defined in 12 U.S.C., Section 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, the deposits of which are insured by the Federal Deposit Insurance Corporation;

6. "Bank supervisory agency" means:

a. any agency of another state with primary responsibility for chartering and supervising a trust institution, and

b. the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the office of Thrift Supervision and any successor to these agencies;

7. "Branch" with respect to a depository institution has the meaning set forth in paragraph 7 of Section 102 of Title 6 of the Oklahoma Statutes;

8. "Charter" means a charter, license or other authority issued by the Commissioner or a bank supervisory agency authorizing a trust institution to act as a fiduciary in its home state;

9. "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account;

10. "Commissioner" means the State Banking Commissioner;

11. "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust;

12. "Department" means the Oklahoma Department of Banking;

13. "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C., Sections 1813(c)(2) and (3);

14. "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust company, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company;

15. "Foreign bank" means a foreign bank, as defined in Section 1(b)(7) of the International Banking Act of 1978, chartered to act as a fiduciary in a state other than this state;

16. "Home state" means:

a. with respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office, and

b. with respect to any other trust institution, the state which chartered such institution;

17. "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution;

18. "Host state" means a state other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office;

19. "License" means the authority granted by the Commissioner pursuant to this act to establish, acquire or maintain a trust office;

20. "New trust office" means a trust office located in a host state which:

a. is originally established by the trust institution as a trust office, and

b. does not become a trust office of the trust institution as a result of:

(1) the acquisition of another trust institution or trust office of another trust institution, or

(2) a merger, consolidation, or conversion involving any such trust institution or trust office;

21. "Office", with respect to a trust institution, means the principal office, a trust office or a representative trust office, but not a branch;

22. "Out-of-state bank" means a bank chartered to act as a fiduciary in any state or states other than this state;

23. "Out-of-state trust company" means either a trust company that is not a state trust company or a savings association whose principal office is not located in this state;

24. "Out-of-state trust institution" means a trust institution that is not a state trust institution;

25. "Person" means an individual, a company or any other legal entity;

26. "Principal office", with respect to:

a. a state trust company, means a location registered with the Commissioner as the state trust company's home office at which:

(1) the state trust company does business,

(2) the state trust company keeps its corporate books and a set of its material records, including material fiduciary records, and

(3) at least one executive officer of the state trust company maintains an office, or

b. a trust institution other than a state trust company, means its principal place of business in the United States;

27. "Registration" means the process by which a trust institution has been authorized by the Commissioner to acquire, establish or maintain a representative trust office in this state;

28. "Representative trust office" means an office at which a trust institution has been authorized by the Commissioner to engage in a trust business other than acting as a fiduciary;

29. "Savings association" means a depository institution that is neither a bank nor a foreign bank;

30. "State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

31. "State bank" means:

a. a bank chartered to act as a fiduciary by this state, or

b. a foreign bank, as defined in Section 1(b)(7) of the International Banking Act of 1978, chartered to act as a fiduciary in this state;

32. "State trust company" means a corporation or a limited liability trust company organized or reorganized under this act, including a trust company organized under the laws of this state before the effective date of this act;

33. "State trust institution" means a trust institution having its principal office in this state;

34. "Trust business" means the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service of a fiduciary in this or another state, including but not limited to:

a. acting as a fiduciary, or

b. to the extent not acting as a fiduciary, any of the following:

(1) receiving for safekeeping personal property of every description,

(2) acting as assignee, bailee, conservator, custodian, escrow agent, registrar, receiver or transfer agent, or

(3) acting as financial advisor, investment advisor or manager, agent or attorney-in-fact in any agreed upon capacity;

35. "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank;

36. "Trust institution" means a depository institution, foreign bank, state bank or trust company;

37. "Trust office" means an office, other than the principal office, at which a trust institution is licensed by the Commissioner to act as a fiduciary; and

38. "Unauthorized trust activity" means:

a. a company, other than one identified in subsection A of Section 5 of this act, acting as a fiduciary within this state,

b. a company engaging in a trust business in this state at any office of such company that is not its principal office, if it is a state trust institution, or that is not a trust office or a representative trust office of such company, or

c. an out-of-state trust institution engaging in a trust business in this state at any time an order issued by the Commissioner pursuant to paragraph 2 of Section 24 of this act is in effect.

These definitions shall be liberally construed to accomplish the purposes of the Multistate Trust Institutions Act. The Department by rule may adopt other definitions to accomplish the purposes of this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1703 of Title 6, unless there is created a duplication in numbering, reads as follows:

The Commissioner may promulgate such rules as the Commissioner determines to be necessary or appropriate in order to implement the provisions of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1704 of Title 6, unless there is created a duplication in numbering, reads as follows:

If any provision of this act or the application of such provision is found by any court of competent jurisdiction in the United States to be invalid as to any trust institution or other person or circumstance, or to be superseded by federal law, the remaining provisions of this act shall not be affected and shall

continue to apply to any trust institution or other person or circumstance.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1705 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. No company shall act as a fiduciary in this state except:

1. A state trust company;

2. A state bank;

3. A savings association organized under the laws of this state and authorized to act as a fiduciary pursuant to state law;

4. A national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C., Section 92a;

5. A federally chartered savings association having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

6. An out-of-state bank with a branch in this state established or maintained pursuant to the laws of this state or a trust office licensed by the Commissioner pursuant to this act;

7. An out-of-state trust company with a trust office licensed by the Commissioner pursuant to this act; or

8. A foreign bank with a trust office licensed by the Commissioner pursuant to this act.

B. No company shall engage in an unauthorized trust activity.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1706 of Title 6, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of this act, a company does not engage in the trust business or in any other business in a manner requiring a charter, license or registration under this act or in an unauthorized trust activity by:

1. Acting in a manner authorized by law and in the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

2. Rendering a service customarily performed as an attorney or law firm in a manner approved and authorized by the Supreme Court of this state;

3. Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

4. Engaging in the sale of title insurance regulated by the State Insurance Commission;

5. Receiving and distributing rents and proceeds of a sale as a licensed real estate broker on behalf of a principal in a manner authorized by state law;

6. Engaging in a securities transaction or providing an investment advisory service as a licensed and registered broker-dealer, investment advisor or registered representative thereof, provided the activity is regulated by the State Securities Commission or the Securities and Exchange Commission;

7. Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the Insurance Department to the extent that the activity is regulated by the Insurance Department;

8. Engaging in the lawful sale of prepaid funeral benefits under a permit issued by the Oklahoma State Board of Embalmers and Funeral Directors under state law, or engaging in the lawful business of a perpetual care cemetery corporation under state law;

9. Acting as trustee under a voting trust as provided by law;

10. Acting as trustee by a public, private, or independent institution of higher education or a university system, as those terms are defined by law, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned,

controlled, provided to or otherwise made available to such institution with respect to its educational or research purposes;

11. Engaging in other activities expressly excluded from the application of this act by rule of the Department;

12. Rendering services customarily performed by a certified public accountant in a manner authorized by the Oklahoma Accountancy Board; and

13. Provided the company is a trust institution and is not barred by order of the Commissioner from engaging in a trust business in this state pursuant to paragraph 2 of Section 24 of this act:

a. marketing or soliciting in this state through the mails, telephone, any electronic means or in person with respect to acting or proposing to act as a fiduciary outside of this state,

b. delivering money or other intangible assets and receiving the same from a client or other person in this state, or

c. accepting or executing outside of this state a trust of any client or otherwise acting as a fiduciary outside of this state for any client.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1707 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A state trust institution may act as a fiduciary or otherwise engage in a trust business in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country, at an office established and maintained pursuant to this act, at a branch or at any location other than an office or branch.

B. A state trust institution may also conduct any activities at any office outside this state that are permissible for a trust

institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the Commissioner applicable to the state trust institution. However, the Commissioner may waive any such prohibition if the Commissioner determines, by order or regulation, that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1708 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution which establishes or maintains one or more offices in this state under this act may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1709 of Title 6, unless there is created a duplication in numbering, reads as follows:

A state trust company or out-of-state trust institution may register any name with the Commissioner in connection with establishing a principal office, trust office or representative trust office in this state pursuant to this act. However, the Commissioner may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1710 of Title 6, unless there is created a duplication in numbering, reads as follows:

A state trust company or a state bank may:

1. Perform any act as a fiduciary;

2. Engage in any trust business; and

3. Exercise any incidental power that is necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, a power conferred in this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1711 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A state trust institution may act as a fiduciary and engage in a trust business at each trust office as permitted by this act and at a branch.

B. A state trust institution may not act as a fiduciary but may otherwise engage in a trust business at a representative trust office as permitted by this act.

C. Notwithstanding the provisions of subsections A and B of this section, a state bank or a state trust company may not engage at an out-of-state office in any trust business not permitted for such an office by the host state where the office is located to trust institutions chartered by such state.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1712 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Each state trust company shall have and continuously maintain a principal office in this state.

B. Each executive officer at the principal office shall be an agent of the state trust company for service of process.

C. A state trust company may change its principal office to any location within this state by filing a written notice with the Commissioner setting forth the name of the state trust company, the street address of its principal office before the change, the street address to which the principal office is to be changed, and a copy of the resolution adopted by the board authorizing the change.

D. The change of principal office shall take effect on the thirty-first day after the date the Commissioner receives the notice pursuant to subsection C of this section. However, the Commissioner may establish an earlier or later date or may, prior to such day, notify the state trust company that it must establish to the satisfaction of the Commissioner that the relocation is consistent with the original determination for the establishment of a state trust company at that location, in which event the change of principal office shall take effect when approved by the Commissioner.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1713 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A state trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Commissioner setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office. The state trust institution shall also furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee, if any, prescribed by the Commissioner.

B. The notificant may commence business at the additional office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

C. The thirty-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for an analysis. If the period of review is extended, the state trust

institution may establish the additional office only upon prior written approval by the Commissioner.

D. The Commissioner may deny approval of the additional office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1714 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A state bank, a state trust company, or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Commissioner. The notice shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution. The trust institution shall also furnish a copy of the resolution adopted by the board authorizing the out-of-state office, and pay the filing fee, if any, prescribed by the Commissioner.

B. The notificant may commence business at the additional office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

C. The thirty-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for an

analysis. If the period of review is extended, the trust institution may establish the additional office only on prior written approval by the Commissioner.

D. The Commissioner may deny approval of the additional office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1715 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution may act as a fiduciary in this state or engage in a trust business at an office in this state only if it maintains:

1. A trust office in this state as permitted by this section through Section 20 of this act; or

2. A branch in this state.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1716 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution which does not operate a trust office in this state and which meets the requirements of Sections 15 through 20 of this act may establish and maintain a new trust office in this state.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1717 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution which does not operate a trust office in this state and which meets the requirements of Sections 15

through 20 of this act may acquire and maintain a trust office in this state.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1718 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to Sections 15 through 20 of this act shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and the filing fee, if any, prescribed by the Commissioner.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1719 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. No trust office of an out-of-state trust institution may be acquired or established in this state pursuant to Sections 15 through 20 of this act unless:

1. The out-of-state trust institution shall have confirmed in writing to the Commissioner that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state;

2. The notificant shall have provided satisfactory evidence to the Commissioner of compliance with:

a. any applicable requirements of state foreign corporation qualification laws, and

b. the applicable requirements of its home state regulator for acquiring or establishing and maintaining such office; and

3. The Commissioner, acting within sixty (60) days after receiving notice under Section 18 of this act, shall have certified to the home state regulator that the requirements of Sections 15 through 20 of this act have been met and the notice has been approved or, if applicable, that any conditions imposed by the Commissioner pursuant to subsection B of this section have been satisfied.

B. The out-of-state trust institution may commence business at the trust office on the sixty-first day after the date the Commissioner receives the notice unless the Commissioner specifies an earlier or later date. However, with respect to an out-of-state trust institution that is not a depository institution and for which the Commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company, such institution shall have satisfied such conditions and provided to the Commissioner satisfactory evidence thereof.

C. The sixty-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the Commissioner.

D. The Commissioner may deny approval of the office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the

Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1720 of Title 6, unless there is created a duplication in numbering, reads as follows:

An out-of-state trust institution that maintains a trust office in this state pursuant to Sections 15 through 20 of this act may establish or acquire additional trust offices or representative trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices set forth in Section 13 of this act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1721 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. An out-of-state trust institution may not act as a fiduciary, but may otherwise engage in a trust business, at a representative trust office as permitted by this section and Section 22 of this act.

B. Subject to the requirements contained in this section and Section 22 of this act, an out-of-state trust institution may establish and maintain representative trust offices anywhere in this state.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1722 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution not maintaining a trust office in this state and desiring to establish or acquire and maintain a representative trust office shall file a notice on a form prescribed by the Commissioner which shall set forth the name of the out-of-

state trust institution, the location of the proposed office, and satisfactory evidence that the notificant is a trust institution. The out-of-state trust institution shall also furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay the filing fee, if any, prescribed by the Commissioner.

B. The notificant may commence business at the representative office on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

C. The thirty-day period of review may be extended by the Commissioner on a determination that the written notice raises issues that require additional information or additional time for an analysis. If the period of review is extended, the out-of-state trust institution may establish the representative trust office only on prior written approval by the Commissioner.

D. The Commissioner may deny approval of the representative office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1723 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. To the extent consistent with subsection C of this section, the Commissioner may make such examinations of any office established and maintained in this state pursuant to Sections 10 through 25 of this act by an out-of-state trust institution as the Commissioner may deem necessary to determine whether the office is being operated in compliance with the laws of this state and in

accordance with safe and sound banking practices. The provisions of Section 209 of Title 6 of the Oklahoma Statutes shall apply to such examinations.

B. The Commissioner may require periodic reports regarding any out-of-state trust institution that has maintained an office in this state pursuant to Sections 10 through 25 of this act. The required reports shall be provided by such trust institution or by the home state regulator. Any reporting requirements prescribed by the Commissioner under this subsection shall be:

1. Consistent with the reporting requirements applicable to state trust companies; and

2. Appropriate for the purpose of enabling the Commissioner to carry out the responsibilities of the Commission pursuant to Sections 10 through 25 of this act.

C. The Commissioner may enter into cooperative, coordinating and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any office in this state of an out-of-state trust institution, or any office of a state trust institution in any host state. The Commissioner may accept such a report of examination and report of investigation in lieu of the Commissioner conducting an examination or investigation.

D. The Commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state trust institution or an out-of-state trust institution maintaining an office in this state to engage the services of such agency's examiners at a reasonable rate of compensation, or to provide the services of the Commissioner's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract under state law.

E. The Commissioner may enter joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any office established and maintained in this state by an out-of-state trust institution or any office established and maintained by a state trust institution in any host state. The Commissioner may at any time take such actions independently if the Commissioner deems such actions to be necessary or appropriate to carry out the responsibilities of the Commissioner pursuant to this section or to ensure compliance with the laws of this state. However, in the case of an out-of-state trust institution, the Commissioner shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator to safety and soundness matters.

F. Each out-of-state trust institution that maintains one or more offices in this state may be assessed and, if assessed, shall pay supervisory and examination fees in accordance with the laws of this state and rules of the Commissioner. Such fees may be shared with other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies in accordance with agreements between such parties and the Commissioner.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1724 of Title 6, unless there is created a duplication in numbering, reads as follows:

Consistent with the Administrative Procedures Act, after notice and opportunity for a hearing:

1. The Commissioner may determine:

   a. that an office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state or in an unsafe and unsound manner, or

b. that a company is engaged in an unauthorized trust activity.

In either event, the Commissioner shall have the authority to take all such enforcement actions as the Commissioner would be empowered to take if the office or the company were a state trust company including, but not limited to, issuing an order temporarily or permanently prohibiting the company from engaging in a trust business in this state;

2. The Commissioner may determine by order that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for establishing a representative trust office in this state pursuant to Section 22 of this act, which order shall be effective on the date of issuance or such other date as the Commissioner shall determine; and

3. In cases involving extraordinary circumstances requiring immediate action, the Commissioner may take any action permitted by paragraph 1 or 2 of this section without notice or opportunity for hearing, but shall promptly afford a subsequent hearing upon an application to rescind the action taken. The Commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving said enforcement action.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1725 of Title 6, unless there is created a duplication in numbering, reads as follows:

Each out-of-state trust institution that maintains an office in this state pursuant to Sections 10 through 25 of this act, or the home state regulator of such trust institution, shall give at least thirty days' prior written notice or, in the case of an emergency

transaction, such shorter notice as is consistent with applicable state or federal law, to the Commissioner of:

1. Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal Change in Bank Control Act of 1978, as amended, 12 U.S.C., Section 1817(j), or the federal Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841 et seq., or any successor statutes thereto;

2. Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

3. The closing or disposition of any office in this state.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1730 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Sections 26 through 35 of this act shall be known and may be cited as the "State Trust Institution Charter Modernization Act".

B. The express purposes of this act are to:

1. Provide for the chartering of trust companies and to permit trust companies to act as fiduciaries and otherwise engage in the trust business in this state, provided they are adequately capitalized, competently managed by persons of integrity, and supervised by the Commissioner, all in order to ensure that such trust companies are operated in compliance with law, in a safe and sound manner and in a manner which protects their clients and customers and other consumers in this state;

2. Improve service and reduce costs for trust institution clients and customers and other consumers in this state by modernizing state laws to permit the delegation by trust institutions of fiduciary functions but not fiduciary

responsibility, authorize clients to designate any trust institution to act for them and to choose an appropriate state's law to govern fiduciary instruments and investments, and protect consumers from excessive fees or undisclosed conflicts of interest of trust institutions and their affiliates; and

3. Permit adequately capitalized and professionally managed trust companies serving only family members and their affiliated entities to operate as private trust companies which may not provide services to the general public.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1731 of Title 6, unless there is created a duplication in numbering, reads as follows:

The definitions contained in Section 2 of the Multistate Trust Institutions Act shall apply to this act unless the context otherwise requires.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1732 of Title 6, unless there is created a duplication in numbering, reads as follows:

Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of such person.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1733 of Title 6, unless there is created a duplication in numbering, reads as follows:

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate this state, a state where affected clients reside, or the state where such trust institution has its principal office, as the state whose laws shall govern any written agreement between such trust institution and its client or any instrument under which the trust institution acts for a client.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1734 of Title 6, unless there is created a duplication in numbering, reads as follows:

Any trust institution that maintains a trust office or representative trust office in this state and its affected clients may designate this state, a state where affected clients reside, or the state where such trust institution has its principal office, as the state whose laws shall govern with respect to the fiduciary investment standards applicable to any written agreement between such trust institution or its client and any other instrument under which the trust institution acts for a client.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1735 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Any person acting as a trustee or as any other fiduciary under the laws of this state may delegate any investment, management or administrative function if such person exercises reasonable care, judgment and caution in:

1. Selecting the delegate, taking into account the delegate's financial standing and reputation;

2. Establishing the scope and other terms of any delegation; and

3. Reviewing periodically the delegate's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

B. Notwithstanding any delegation permitted by subsection A of this section, any person acting as a trustee or in any other fiduciary capacity under the laws of this state shall retain responsibility for the due performance of any delegated fiduciary function.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1736 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Any person acting as a trustee or in any other fiduciary capacity pursuant to Section 31 of this act may hire and compensate, as a delegate, an affiliate of such person if:

1. Authorized by a trust or fiduciary instrument;

2. Authorized by court order;

3. Authorized in writing by each affected client; or

4. The standards set forth in Section 31 of this act are satisfied.

B. Fees paid to an affiliate shall be competitive with fees charged by nonaffiliates that provide substantially similar services.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1737 of Title 6, unless there is created a duplication in numbering, reads as follows:

The compensation arrangement between a client and any person acting as a trustee or as any other fiduciary pursuant to this act shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1738 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Any company, proposing to act as a trustee or in any other fiduciary capacity pursuant to a written agreement to be entered into with a prospective client after the effective date of this act, which company has any potential or actual conflict of interest which may reasonably be expected to have an impact on the independence or judgment of such trustee or fiduciary, shall deliver a disclosure statement to the prospective client:

1. Not less than forty-eight (48) hours prior to entering into any written or oral trust or fiduciary agreement with such client or prospective client; or

2. At the time of entering into any such agreement if the client has a right to terminate the agreement without penalty within three (3) or more business days after entering into the agreement.

B. The disclosure statement shall contain appropriate information concerning the actual or potential conflict of interest. If such trustee or other fiduciary proposes to delegate any fiduciary function to an affiliate, the nature of the affiliation and whether the trustee or other fiduciary may directly benefit from the delegation shall be disclosed in the disclosure statement.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1739 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. Subject to the provisions of this section, a trust institution may purchase assets of a state trust company or trust-related assets of another trust institution, including the right to control accounts established with the trust institution. Except as otherwise expressly provided by this section or any other law, the purchase of all or part of the assets of the trust institution does not make the purchasing trust institution responsible for any liability or obligation of the selling trust institution that the purchasing trust institution does not expressly assume. Except as otherwise provided by this act, this section does not govern or prohibit the purchase by a state trust institution of all or part of the assets of a corporation or other entity that is not a trust institution.

B. If the acquiring institution is a state bank, a state trust company, an out-of-state trust institution which maintains neither a branch nor a trust office in this state, or a savings association chartered under the laws of this state, an application in the form

required by the Commissioner shall be filed with the Commissioner for any acquisition of all or substantially all of:

1. The assets of a state trust company; or

2. The trust assets of another trust institution.

C. The Commissioner shall investigate the condition of the purchaser and seller and may require the submission of additional information as considered necessary to make an informed decision. The Commissioner shall approve the purchase if:

1. The acquiring trust institution will be solvent and have sufficient capitalization for its business and location;

2. The acquiring trust institution has complied with all applicable statutes and rules including without limitation any applicable requirements of Sections 26 through 35 of this act;

3. All fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed by the acquiring trust institution;

4. All conditions imposed by the Commissioner have been satisfied or otherwise resolved; and

5. All fees and costs have been paid.

D. A purchase requiring an application pursuant to subsection B of this section is effective on the date of approval, unless the purchase agreement provides for, and the Commissioner consents to, a different effective date.

E. The acquiring trust institution shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution under each account included in the assets acquired.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1740 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A private trust company engaging in the trust business in this state shall comply with each and every provision of this act

applicable to a trust company unless expressly exempted therefrom in writing by the Commissioner pursuant to this section, by rule adopted by the Department or under a predecessor statute.

B. A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of subsection B of Section 19 of this act. The Commissioner may grant the exemption in whole or in part if the Commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

1. "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether for a fee, commission or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust or other company that is not one hundred percent (100%) owned by one or more family members; and

2. "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals.

C. All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

D. At the expense of the private trust company, the Commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve the application for exemption or set the application for hearing not later than the sixty-first day after the date the

Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

E. Any exemption granted under this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this act.

F. The Department may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining or revoking exempt status.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1741 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. 1. A private trust company requesting an exemption from the provisions of this act, pursuant to Section 36 of this act, shall file an application with the Commissioner containing the following:

a. a nonrefundable application fee as set by the Department,

b. a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application,

c. a statement under oath of the reason for requesting the exemption,

d. a statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the Commissioner,

e. the current street mailing address and telephone number of the physical location in this state at which

the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U.S. Postal Service post office box or a private mail box, postal box or mail drop, and

f. listing of the specific provisions of the act for which the request for exemption is made.

2. The Commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph 1 of this subsection.

B. To maintain status as an exempt private trust company under this act, the private trust company:

1. Shall not transact business with the public;

2. Shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the Commissioner and be accompanied by a fee determined by the Department. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the Department. The Department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the Department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The Commissioner may examine or investigate the private trust company periodically as necessary to verify the certification;

3. Shall comply with the principal office provisions of Section 12 of this act and with the address and telephone requirements of subparagraph e of paragraph 1 of subsection A of this section; and

4. Shall pay the corporate franchise tax, as certified by the Oklahoma Tax Commission.

C. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this act, and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status shall be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

D. The Commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

1. The exempt private trust company makes a false statement under oath on any document required to be filed by the act or by any rule promulgated by the Department;

2. The exempt private trust company fails to submit to an examination as required by Section 12 of this act;

3. The exempt private trust company withholds requested information from the Commissioner; or

4. The exempt private trust company violates any provision of this section applicable to exempt private trust companies.

E. If the Commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the Commissioner may, by personal delivery or registered or certified mail, return receipt requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification shall state grounds for the revocation with reasonable certainty. The notice shall state its effective date, which may not be before the fifth day after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect, the revocation is final and nonappealable as to that private trust

company, and the private trust company shall be subject to all of the requirements and provisions of the act applicable to nonexempt state trust companies.

F. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this act from which it was formerly exempt. If, however, the Commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the Commissioner may shorten or eliminate, in the Commissioner's sole discretion, the five-calendar-day compliance period.

G. If the private trust company does not comply with all of the provisions of this act, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the Commissioner may:

1. Institute any action or remedy prescribed by this act, or any applicable rule or regulation; or

2. Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

H. A private trust company that currently has a valid exemption under a predecessor statute shall be considered exempt under this act.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1755 of Title 6, unless there is created a duplication in numbering, reads as follows:

A. A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the Commissioner, which shall set forth the name of the private trust company and an acknowledgement that any

exemption granted or otherwise applicable to the private trust company pursuant to Section 36 of this act shall cease to apply on the effective date of such notice. The private trust company shall also furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public and pay the filing fee, if any, prescribed by the Commissioner.

B. The notificant may commence transacting business with the general public on the thirty-first day after the date the Commissioner receives the notice, unless the Commissioner specifies an earlier or later date.

C. The thirty-day period of review may be extended by the Commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the Commissioner.

D. The Commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness, that the proposed transacting of business with the general public would be contrary to the public interest or if the Commissioner determines that the notificant will not within a reasonable period be in compliance with any provision of this act from which the notificant had been previously exempted pursuant to Section 36 of this act.

SECTION 39. AMENDATORY 6 O.S. 1991, Section 1109, as last amended by Section 90, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1997, Section 1109), is amended to read as follows:

Section 1109. A. 1. Any bank or savings association may sell to any other bank or savings association all, or substantially all,

of the selling institution's assets and business; or all, or substantially all, of the assets and business of any department or branch of the selling institution.

2. Any trust company, bank, or savings association may sell to any other trust company, bank, or savings association all, or substantially all, of the assets and trust business or such trust company, bank, or savings association, or all, or substantially all, of the assets and business of any department or branch of the selling trust company, bank, or savings association.

B. 1. Any bank or savings association may, upon assuming the liabilities relating thereto, purchase all, or substantially all, of the assets and business of another bank or savings association, or all, or substantially all, of the assets and business of any department or branch of another bank or savings association.

2. Any trust company, bank, or savings association may, subject to the requirements of subsection E of this section, purchase all, or substantially all, of the assets and business of another trust company, bank, or savings association, or all, or substantially all, of the assets and business of any department or branch of another trust company, bank, or savings association. If the purchasing or selling institution is an out-of-state institution, the agreement of purchase and sale shall be authorized and approved by the board of directors of the institution in accordance with such laws as shall be applicable.

C. The agreement of purchase and sale shall be authorized and approved by the boards of directors of the purchasing and selling banks, trust companies, or savings associations. If the agreement of purchase and sale includes the transfer of a majority of the assets or the transfer of a majority of the deposits of a selling institution, the agreement of purchase and sale shall be authorized and approved by the vote of a majority of the outstanding shares of the selling institution at a meeting called for the purpose in like

manner as meetings to approve mergers are called pursuant to Section 1104 of this title and the stockholders shall be entitled to dissent in the same manner as provided in Section 1104 of this title. If the agreement of purchase and sale includes the purchase of assets which are greater than fifty percent (50%) of the purchasing institution's assets prior to the purchase, or includes the assumption of deposits which are greater than fifty percent (50%) of the purchasing institution's deposits prior to the purchase, the agreement of purchase and sale shall be authorized and approved by the vote of a majority of the outstanding shares of the purchasing institution at a meeting called for the purpose in like manner as meetings to approve mergers are called pursuant to Section 1104 of this title and the stockholders shall be entitled to dissent in the same manner as provided in Section 1104 of this title. If the stockholders of an institution are hereby entitled to dissent, they shall receive notice of their right to dissent along with notice of the stockholders' meeting which is to consider the agreement of purchase and sale, in the same manner as provided in Section 1104 of this title with respect to mergers. Copies of the agreement of purchase and sale shall be filed with and subject to the approval of the Commissioner, together with a fee for review of the transaction as required by rule of the Board, and shall be accompanied by evidence of such stockholders' approval thereof in like manner as agreements of merger are filed.

D. After the approval required by subsection C of this section is given by the stockholders, a notice of such purchase and sale shall be published once a week for two (2) successive weeks in a newspaper of general circulation in the county in which the assets of the selling bank, trust company, or savings association are located if the entity is an Oklahoma institution, and if not, shall be published as required by the law of the state where the selling institution is located. Proof of such publication shall be filed

with the Department. The Commissioner may permit the requirement for publication of notice to be satisfied after the purchase and sale becomes effective if the Commissioner determines that:

1. The selling bank, trust company, or savings association is solvent, but either is close to insolvency or is experiencing a run on deposits;

2. The terms of the agreement of purchase and sale are essentially fair to the selling bank, trust company, or savings association; and

3. The selling bank, trust company, or savings association will remain solvent after the purchase and sale.

E. Any deposit account or certificate of deposit which is unconditionally assumed by the purchasing institution pursuant to an agreement approved by the Commissioner, and which, after a depositor's preexisting accounts at the purchasing institution are added to the accounts assumed from the selling institution, is fully covered by the FDIC insurance limits at the purchasing institution, shall cease to be an obligation of the selling institution after the purchase and sale becomes effective. Notwithstanding any term of the purchase and sale agreement or of the contract of deposit, a deposit account, certificate of deposit or other creditor's account shall be deemed to be only conditionally assumed by the purchasing institution if:

1. The amount of a depositor's preexisting accounts at the purchasing institution, together with that depositor's accounts which are assumed from the selling institution, would exceed the purchasing institution's FDIC insurance limits; or

2. A depositor's or other creditor's claims against a selling institution and the loans of the depositor or other creditor from the selling institution are not simultaneously assumed by the purchasing institution so as to preserve a right of set-off. Any

depositor or creditor of the selling institution whose business is conditionally sold has the right, after such sale:

a. upon payment of any indebtedness owing by the depositor or creditor to the selling institution, to withdraw the deposit of the depositor or creditor in full from the selling institution on demand, or

b. to exercise the depositor's or creditor's right of set-off.

3. Notwithstanding the preceding language of paragraphs 1 and 2 of this subsection, after a person deals with the purchasing institution with knowledge of the purchase, such person's deposit or account shall no longer be deemed to be only conditionally assumed.

F. 1. The agreement of sale may provide for the transfer to the purchasing institution of all fiduciary positions held by the selling institution. The purchasing institution shall enjoy all such positions and all rights, property, franchises, and interests, including any and all fiduciary positions to and for which the selling institution may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such position is in effect at the time of the substitution, in the same manner and to the same extent as all such positions were held and enjoyed by the selling institution.

2. The selling and purchasing institutions shall jointly file a petition with the district court of the county in which the main office of the selling institution is situated requesting that the purchasing institution be substituted, except as may be expressly excluded in such petition, in every fiduciary position of the selling institution. Such petition need not designate the fiduciary positions in which the requested substitution is to be made.

3. Upon the filing of such petition, the court shall enter an order setting the petition for hearing and shall direct that notice of the hearing be given in the manner provided in this subsection or

in the manner required by the law of the state where the selling institution is located if it is an out-of-state institution.

4. A copy of the order provided for in paragraph 3 of this subsection shall be published once a week for two (2) successive weeks in a newspaper of general circulation to be designated by the court and published in the county in which the petition was filed. If there is no newspaper published in such county, publication shall be made in a newspaper of general circulation in the State of Oklahoma designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made.

5. The filing of such petition and the making and entering of such order and the giving of notice of such order as required by this subsection gives the court full jurisdiction of the trusts and all parties interested therein. The court having jurisdiction in such matter shall require the ~~Commissioner~~ selling institution to mail, by registered mail postage prepaid, a copy of such order to each living trustor of all private trusts in which such institution is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. Such notice shall be mailed to the last-known address of each such trustor or participating beneficiary as shown by or as may be ascertained by reasonably diligent efforts from the records of such institution. Proof of mailing shall be in such form as the court shall require.

6. The district court shall enter a single order substituting the purchasing institution in every fiduciary position to and for which the selling institution may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such position is in effect at the time of the substitution, except as may be otherwise specified in such order, upon its finding as follows:

a. notice of hearing the petition has been given as required by this subsection,

b. the purchasing institution is duly authorized to exercise trust and fiduciary powers in Oklahoma,

c. the selling and purchasing institutions are not directly or indirectly owned or controlled by the same holding company or multibank holding company, or, if the selling and purchasing institutions are directly or indirectly owned or controlled by the same holding company or multibank holding company, then the purchasing institution shall assume all trust liabilities of the selling institution, and

d. such sale or transfer was not made in order to avoid any liability incurred by the selling institution.

7. Upon entry of such order, the purchasing institution shall, without further act, be substituted in every such fiduciary position, and such substitution may be evidenced by filing a certified copy of the order with the clerk of any district court in this state.

8. Notwithstanding the foregoing provisions of this subsection, the provisions of the instrument creating each fiduciary position subject to the agreement of sale shall control such succession, if such instrument so provides.

G. Except as provided for in subsection E of this section, no right against or obligation of the selling institution in respect of the assets or business sold shall be released or impaired by the sale until one (1) year from the last date of publication of the notice pursuant to subsection D or F of this section, but after the expiration of such year no action can be brought against the selling institution on account of any deposit, obligation, trust or asset transferred to or liability assumed by the purchasing institution.

H. This section shall be applicable to any bank, trust company, or savings association, regardless of whether its main office or charter is located within this state or elsewhere.

SECTION 40. REPEALER 18 O.S. 1991, Sections 476, 477 and 478, are hereby repealed.

SECTION 41. This act shall become effective November 1, 1998.

Passed the House of Representatives the 3rd day of March, 1998.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1998.

President of the Senate