ENGROSSED HOUSE
BILL NO. 1326

By: Weaver of the House

and

Fisher of the Senate

(banks and trust companies - amending 13 sections in Title 6 - State Banking Department - Banking Board - judicial review of orders - examinations and reports -

effective date)

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 201, as last amended by Section 4, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 201), is amended to read as follows:

Section 201. A. There shall be a Banking Department which shall be a separate department of the state government charged with supervision of the activities in this state as provided in ~~this~~ the Oklahoma Banking Code of 1997 and in other legislation conferring jurisdiction upon the Department.

B. The head of the Department shall be the Commissioner. The Commissioner shall be appointed by the Governor with the advice and consent of the Senate. The Commissioner shall have been a qualified elector of the state for at least three (3) years prior to the appointment, shall be at least thirty-five (35) years old and shall have had ten (10) years' experience as a bank officer or employee, or five (5) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner. The Commissioner shall be appointed for a term of four (4) years. The Commissioner shall continue to serve

until a successor is duly appointed, confirmed and qualified. The Commissioner may be removed by the Governor for cause after notice and hearing. A successor to a Commissioner who dies, resigns or is removed shall be appointed in the same manner as provided in this section.

C. 1. The Commissioner shall appoint a Deputy Commissioner who ~~shall~~ may also serve as secretary to the Board hereinafter created. The Deputy Commissioner shall have been a qualified elector of the state for at least three (3) years prior to the appointment, shall be at least thirty (30) years old and shall have had five (5) years' experience as a bank officer or employee, or three (3) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner. If the office of the Commissioner is vacant or if the Commissioner is absent or unable to act, the Deputy Commissioner shall be the acting Commissioner.

2. The Commissioner may appoint Administrative Assistants whose administrative duties shall be prescribed by the Commissioner.

3. The Attorney General is hereby authorized to appoint an Assistant Attorney General, in addition to those now provided by law, to be assigned to the Department. The Assistant Attorney General shall perform such additional duties as may be assigned by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to Assistant Attorneys General. The Banking Department is authorized to pay from appropriated funds all or any part of the salary of the Assistant Attorney General.

4. The Commissioner may also appoint a Budget Director for the Department and a Credit Union Administrator. The Budget Director and Credit Union Administrator shall have the duties and authority as prescribed by the Commissioner.

5. The Commissioner shall prepare in writing a manual of all employee positions for the Department, including job

classifications, personnel qualifications, duties, maximum and minimum salary schedules and other personnel information for approval by the Board. The Commissioner may select, appoint and employ such accountants, attorneys, auditors, examiners, clerks, secretaries, stenographers and other personnel as the Commissioner deems necessary for the proper administration of the Department and any other statutory duties of the Commissioner.

D. All officers and employees of the Department shall be in the exempt unclassified service as provided for in Section 840-5.5 of Title 74 of the Oklahoma Statutes. All future appointees to such positions shall be in the exempt unclassified service. Except as provided in subsection B of this section, officers and employees of the Department shall not be terminable except on cause shown in an individual proceeding as provided by the Administrative Procedures Act.

E. The Commissioner may delegate to any officer or employee of the Department any of the powers of the Commissioner and may designate any officer or employee of the Department to perform any of the duties of the Commissioner.

F. The Commissioner, Deputy Commissioner, Assistants to the Commissioner ~~and~~, credit union administrator, budget director, examiners, examiner-trainees, and all other personnel shall, before entering upon the discharge of their duties, take and subscribe to the oath of office required of state officers as provided by Section 36.2A of Title 51 of the Oklahoma Statutes.

G. 1. ~~Adoption of seal.~~ The Commissioner shall adopt an appropriate seal as the Seal of the State Banking Commissioner.

2. ~~Affixing seal - Effect.~~ Every certificate, assignment and conveyance executed by the Commissioner, in pursuance of the authority conferred upon the Commissioner by law and sealed with the seal of the Department, shall be received in evidence and recorded

in the proper recording offices in the same manner as a deed regularly acknowledged, as required by law.

3. ~~Fees.~~ Whenever it is necessary for the Commissioner to approve any instrument and to affix the official seal thereto, the Commissioner ~~shall~~ may charge a fee for affixing the approval of the Commissioner and the official seal to such instrument. Copies of all records and papers in the office of the Department, certified by the Commissioner and authenticated by the seal, shall be received in evidence in all cases equally and of like effect as the original. Whenever it is proper to furnish a copy of any paper filed in the Department and to certify such paper, the Commissioner may charge a fee for furnishing such copy, for affixing the official seal on such copy and for certifying the same.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 201.1, as last amended by Section 5, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 201.1), is amended to read as follows:

Section 201.1 A. ~~Except as provided in subsection B of this section the annual compensation, payable monthly, of the Commissioner shall be the sum of Seventy-one Thousand Nine Hundred Fifty-four Dollars ($71,954.00).~~

~~B.~~ The annual compensation, payable monthly, of the Commissioner ~~who is appointed after July 1, 1992, as provided by subsection B of Section 201 of this title~~, shall be fixed by the Banking Board from appropriations made by the Legislature and shall be increased by the percentage or amount provided for salary increases for employees of the Department authorized by the Legislature for each fiscal year beginning with Fiscal Year 1993.

~~C.~~ B. The Commissioner and, with the Commissioner's authority, other members of the Department shall be entitled to reimbursement for actual and necessary travel expenses incurred in the performance of their duties, as provided by the State Travel Reimbursement Act.

SECTION 3. AMENDATORY 6 O.S. 1991, Section 207, as last amended by Section 9, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 207), is amended to read as follows:

Section 207. A. ~~Appeals to the Supreme Court.~~ Final orders of the Board or the Commissioner may be appealed to the Supreme Court of Oklahoma by any party directly affected and showing aggrievement by the order. A mere increase in competition resulting from the order shall not constitute aggrievement.

B. ~~Commencement of appeal.~~ An appeal shall be commenced by filing with the clerk of the Supreme Court, within thirty (30) days from the date of the order or decision, a petition in error with a copy of the order or decision appealed from. The time limit prescribed herein for filing the petition in error may not be extended. The manner of perfection of the record of the proceedings to be reviewed and the time for its completion shall be in accordance with rules prescribed by the Supreme Court.

C. 1. A necessary jurisdictional prerequisite to the acceptance of the appeal by the Supreme Court shall include an affirmative showing of aggrievement from the record, by reference in the petition in error, which cannot be a mere increase in competition.

2. The appeal must be perfected by the posting of a bond by the appellant in an amount set by the Board not to exceed the amount of projected income for four (4) years in the case of a branch, relocation, merger or acquisition, or an amount equal to the capital, surplus and undivided profits required to be paid in the case of a new charter.

3. In the event the appellant is not the prevailing party in the appeal, the prevailing party may apply to the Board for an order assessing the bond in the amount demonstrated by such party to have been lost by reason of the delay caused by the appeal. The amount

shall be based on the income projections in the original proceeding found by the Board to have been reasonable.

D. ~~Standard of review.~~ The Court shall give great weight to findings made and inferences drawn by the Board or Commissioner on questions of fact and interpretations or conclusions of law which the Board or Commissioner are charged or authorized with enforcing, interpreting, or applying. The Court may affirm the decision or remand the case for further proceedings. Additionally, the Court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences or conclusions are not supported by substantial evidence in the record.

SECTION 4. AMENDATORY 6 O.S. 1991, Section 209, as last amended by Section 1, Chapter 145, O.S.L. 1998 (6 O.S. Supp. 1998, Section 209), is amended to read as follows:

Section 209. A. 1. ~~Number of examinations - Acceptance of F.D.I.C. or Federal Reserve System examination in lieu of one examination.~~ The Commissioner shall, at least every eighteen (18) months or as often as the Commissioner deems advisable, examine every bank and trust company, and for the purpose of making such examinations and special examinations, shall have full access to all books, papers, securities, records and other sources of information under the control of banks and trust companies; shall make and file in the office of the Commissioner a report in detail disclosing the results of such examination; and shall mail a copy of such report to the bank or trust company examined. However, the Commissioner may accept, in lieu of any three consecutive bank examinations, the examination that may have been made of the bank or trust company within a reasonable period by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the Office of Thrift Supervision provided a copy of the examination is furnished to the Commissioner.

2. The Commissioner may also accept any other report relative to the condition of a bank or trust company, to include joint or concurrent examinations which may be obtained by the authorities within a reasonable period, in lieu of such report authorized by the laws of this state to be required of such bank by the Banking Department, provided a copy of such report is furnished to the Commissioner.

3. The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the Office of Thrift Supervision with respect to the periodic examination or other supervision of any state bank ~~or~~, trust company, or state thrift.

4. When requested in writing upon authority of the board of directors or stockholders owning a majority of the capital stock of any bank or trust company, the Commissioner shall, if in the opinion of the Commissioner such examination is desirable, make or cause to be made an examination into the affairs and conditions of such bank or trust company. For such examination such bank or trust company shall pay the same fees as provided for in subsection B of Section 211 of this title.

B. ~~Reports - Number - Dates - Verification.~~ Every bank shall make four reports each year and more often if called upon by the Commissioner and according to the form which may be prescribed by the Commissioner, and every trust company shall make two reports each year and more often if called upon by the Commissioner and according to the form which may be prescribed by the Commissioner. They must be verified by the oath or affirmation of the president, cashier or secretary of such bank or trust company, and attested by the signatures of at least two of the directors. Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the corporation at the close of business on any

last day by the Commissioner specified, and shall be transmitted to the Commissioner within thirty (30) calendar days after the call date, and may be published at the expense of the bank or trust company in the same form in which it is made to the Commissioner. The Commissioner shall also have power to call for special reports from any bank or trust company whenever, in the Commissioner's judgment, the same are necessary in order to gain a full and complete knowledge of its condition. However, the reports authorized and required by this section, to be called for by the Commissioner, shall relate to a date prior to the date of such call to be specified therein. Additionally, the Commissioner may accept, in lieu of the reports referred to in this section, reports made by banks that are members of the Federal Reserve System on forms provided by the Federal Reserve System.

C. ~~Penalty for failure to make reports - Action to recover penalty - Payment into General Revenue Fund.~~ Every bank or trust company which fails to make and transmit any report required within the discretion of the Commissioner, under ~~this~~ the Oklahoma Banking Code of 1997, shall be subject to a penalty not to exceed Fifty Dollars ($50.00) for each day, after the period respectively therein mentioned, that the bank or trust company delays to make and transmit its report. Whenever any bank or trust delays or refuses to pay the penalty herein imposed for a failure to make and transmit a report, the Commissioner is hereby authorized to maintain an action in the name of the state against the delinquent bank or trust company for the recovery of such penalty, and all sums collected by such action shall be paid into the State Treasury to be credited to the General Revenue Fund.

D. ~~Forms for examination and reports - Preservation for ten years - Confidential nature.~~ For the purpose of carrying into effect the provisions of this Code, the Commissioner shall provide a form for the necessary blanks for such examinations and reports; and

all examinations and reports received by the Commissioner shall be preserved in the office of the Commissioner for a period of not less than ten (10) years. Such examination and reports and all other records of operating banks and trust companies in the Banking Department are to be kept confidential, except as permitted by this Code.

SECTION 5. AMENDATORY 6 O.S. 1991, Section 306.1, as last amended by Section 24, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 306.1), is amended to read as follows:

Section 306.1 A. ~~Acceptance for filing.~~ Once the Commissioner is satisfied that the organizers have substantially complied with the requirements of Sections 304 and 305 of this title, the Commissioner shall accept the application for filing and shall notify the organizers of the acceptance. Applicants shall have one opportunity to correct deficiencies. Deficiencies that are not corrected adequately when the application is resubmitted may cause the application to be considered withdrawn or disapproved.

B. ~~Notice of acceptance for filing. By publication.~~ Within ten (10) days after the Commissioner has ~~received~~ accepted an application for filing, the applicant shall publish notice of the filing in a legal newspaper of general circulation in the city, town, or county in which the proposed bank or trust company is to be located. The notice shall be published on the same day of two (2) consecutive weeks and shall contain a statement that an application has been submitted, the names of the organizers, the name and location of the proposed bank or trust company and the date on which the application was ~~received~~ accepted for filing.

The applicant shall promptly furnish the Commissioner an affidavit evidencing such publication.

SECTION 6. AMENDATORY 6 O.S. 1991, Section 402, as last amended by Section 35, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 402), is amended to read as follows:

Section 402. All banks or trust companies now or hereafter organized under the laws of this state shall, without specific mention thereof in its certificate of incorporation, have all the powers conferred by ~~this~~ the Oklahoma Banking Code of 1997 and the following additional corporate powers:

1. To continue perpetually as a corporation;

2. To make contracts;

3. To sue and be sued, complain and defend, in its corporate name;

4. To sell any asset in the ordinary course of business;

5. To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced;

6. To make, alter, amend, and repeal bylaws, not inconsistent with its certificate of incorporation or with law, for the administration and regulation of the affairs of the corporation;

7. To elect, appoint or remove officers and agents of the corporation and to define their duties and fix their compensation;

8. To adopt and operate reasonable bonus, profit-sharing and pension plans for officers and employees;

9. To make contributions to or for the use or benefit of the following:

a. the United States, any state, territory, or political subdivision thereof, the District of Columbia or any possession of the United States, for exclusively public purposes,

b. a corporation, foundation, trust, community chest, or other organization created or organized in the United States, or in any state or territory, or of the District of Columbia, or of any possession of the United States, and organized and operated exclusively for religious, charitable, scientific, veteran

rehabilitation service, civic enterprise, literary or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, or

c. other lawful expenditures, contributions and donations; to the extent authorized, approved, or ratified by action of the board of directors of the corporation, except as otherwise specifically provided or limited by its certificate of incorporation, its bylaws, or by resolution duly adopted by its stockholders;

10. ~~A bank now or hereafter organized under the laws of this state, without specific mention in its charter, shall also have the power to act as escrow agent~~ A bank shall have the power to exercise by its directors, duly authorized officers or agents, all such incidental powers as shall be necessary to carry on the banking business including, but not limited to, all such powers as may now or hereafter be conferred upon national banks by the laws of the United States and the regulations and policies of the U.S. Comptroller of the Currency, unless otherwise prohibited or limited by the Commissioner or the Board;

11. A bank shall have the power to exercise by its directors, duly authorized officers or agents, subject to law, all such powers as shall be necessary to carry on the banking business;

12. ~~A bank shall have the power to exercise by its directors, duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the banking business including, but not limited to, all such powers as may now or hereafter be conferred upon national banks by the laws of the~~

~~United States and the regulations and policies of the U.S. Comptroller of the Currency, unless otherwise prohibited or limited by the Commissioner or the Board. The provisions of this paragraph shall not be construed to permit a bank to exercise by its directors, duly authorized officers or agents any powers to establish and operate branches except to the extent expressly permitted in Sections 501.1 through 506 of this title~~ A bank now or hereafter organized under the laws of this state, without specific mention in its charter, shall also have the power to act as escrow agent;

13. A bank may purchase for its own account investment securities under such limitations and restrictions as the Commissioner may prescribe by policy statement pursuant to subsection F of Section 204 of this title;

14. To lease, hold, purchase and convey any and all real estate in the manner provided in this Code and not otherwise;

15. To act as fiscal or transfer agent, executor, administrator, guardian of estates, assignee, receiver, depository and trustee, provided such bank or trust company has complied with the laws of this state relating to the organization and regulation of trust companies;

16. To issue and sell securities as the Commissioner may prescribe by policy statement pursuant to subsection F of Section 204 of this title;

17. To invest in tangible personal property, including, without limitation, vehicles, manufactured homes, machinery, equipment, or furniture, for lease financing transactions on a net-lease basis, subject to rule or order of the Commissioner limiting the amount the bank may invest in such property;

18. To make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families, such as by providing housing, services, or

jobs. A state bank may make such investments directly or by purchasing interests in an entity primarily engaged in making such investments. A state bank shall not make any such investment if the investment would expose the bank to unlimited liability. The aggregate investment of a state bank under this subsection shall not exceed ten percent (10%) of the capital of the bank; and

19. Upon approval by the Commissioner, a bank may underwrite issues of securities or stock through a subsidiary.

SECTION 7. AMENDATORY 6 O.S. 1991, Section 501.1, as last amended by Section 1, Chapter 404, O.S.L. 1997 (6 O.S. Supp. 1998, Section 501.1), is amended to read as follows:

Section 501.1 A. ~~Authorization to establish branches.~~

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

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

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

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

wall of the appropriate main bank building or branch bank building and the nearest exterior wall of the branch bank or facility.

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

B. ~~Authorization to accept deposits at institutions of higher education.~~ Any main bank, branch bank or savings association located in a county where an institution of higher education is located may open accounts and accept deposits for not to exceed three (3) days per year on the campus of the institution of higher education at an institution-sponsored event if permission is granted by the institution. A bank or savings association may use a mobile facility for the purpose of opening accounts and accepting deposits as described in this subsection. Except as provided in this subsection, a mobile facility shall not be used for any other purpose.

C. ~~Authorization to branch by acquisition.~~

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

2. If a bank or savings association acquired pursuant to this subsection had not established any or all of the outside-attached facilities or detached facilities permitted under Section 415 of this title or Section 381.24b of Title 18 of the Oklahoma Statutes at the time of acquisition, the acquiring bank may establish such facilities after the acquisition.

D. ~~Deposit limitation.~~

1. It shall be unlawful for any bank or out-of-state bank which has direct or indirect control of more than fifteen percent (15%) of the total amount of deposits of insured depository institutions located in Oklahoma as determined by the Commissioner on the basis of the most recent reports of such institutions to their supervisory authorities to acquire any other bank or savings association in this state.

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

a. in a good faith fiduciary capacity, except when such shares are held for the benefit of the acquiring bank's shareholders, or

b. by a bank in the regular course of securing or collecting a debt previously contracted in good faith, or

c. at the request of or in connection with the exercise of regulatory authority for the purpose of preventing imminent failure of the bank or savings association or to protect the depositors thereof as determined by the principal supervisory agency in its sole discretion.

Provided, however, at the end of a period of five (5) years from the date of acquisition, for the circumstances set forth in

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

E. ~~Authorized acquisitions.~~ Subject to the limitations in subsection D of this section, a bank or savings association shall not be acquired by a bank and operated as a branch bank until the bank or savings association to be acquired has been in existence and continuous operation for a period of five (5) years. Subject to the limitations in subsection D of this section, after January 1, 1997, a branch bank or savings association branch shall not be acquired by a bank and operated as a branch bank until the branch bank or savings association branch to be acquired has been in existence and continuous operation for a period of five (5) years. The provisions of this subsection shall not prevent a bank from acquiring a bank to be operated as a branch bank whose charter was granted for the purpose of:

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

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

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

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

2. The application for a certificate to establish or operate a branch bank of a state bank shall comply with the regulations of the Board. Within thirty (30) days after receipt of the application, the Commissioner shall report the results of the investigation of the Commissioner to the Board. Notice of hearing on the application shall be given as required by any rule by the Board. Within twenty (20) days after the conclusion of the hearing, the Board, in its sole discretion, shall approve or deny the application and shall notify the applicant of its decision. An application fee may be assessed in an amount set by rule of the Board.

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

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

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

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

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

application if filed prior to the filing of the branch application;

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

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

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

3. By relocation of a main office.

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

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

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

(2) divestiture of any such branch, or

(3) closing of any such branch.

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

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

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

K. Beginning May 31, 1997, a bank, branch bank, savings association or savings association branch which has been in existence for five (5) years or more may be acquired by and engage in an interstate merger transaction with any out-of-state bank in accordance with applicable laws and rules of the Department and the state in which the main office of the out-of-state bank is located. If the out-of-state bank does not have a branch bank or savings association branch in this state at the time the interstate merger application is filed with the appropriate regulatory authority, then the out-of-state bank must acquire the bank or the savings association, and may not acquire just a branch thereof. An interstate merger transaction will not be permitted if it will result in a violation of the fifteen percent (15%) deposit limitation contained in subsection D of this section. If the result of an interstate merger transaction is that the bank or savings association which is acquired is converted to a branch bank of an out-of-state bank, it shall have all the powers and be subject to the same limitations as any other branch bank located in this state. All branch banks of an out-of-state bank shall be regulated by the Commissioner as if the branch banks comprised an Oklahoma bank and the branch banks shall comply with applicable Oklahoma laws and

rules in the conduct of their business in this state to the maximum extent authorized under federal law. No branch bank of an out-of-state bank shall be permitted to establish separate branch banks or limited service facilities, or to engage in any activity not permissible for a bank in this state.

L. Beginning May 31, 1997, a bank may establish a branch bank in any other state, or may acquire branch banks of an out-of-state bank which are located in any other state in accordance with the laws of the other state. The bank shall be required to follow all procedures and to obtain all approvals necessary to establish or acquire a branch bank under applicable Oklahoma law and any applicable rules as may be established by the Board. The bank shall file with the Department a copy of each application or notice filed with federal or other state regulatory authorities relating to the transaction at the same time the application or notice is filed with the federal or other state regulatory authorities. Upon consummation of the transaction, the bank shall have all of the powers under the applicable laws and regulations of the state in which each branch bank is located, subject to the duties and restrictions thereof. In addition to any regulation by bank and regulatory authorities in the state where a branch bank is located, each branch bank located outside of this state shall be subject to regulation by the Department as if the branch bank were located in this state and shall comply with the law of this state in the conduct of its banking business in such other state.

M. The provisions of this section shall not be construed as permitting branches established pursuant to this section through an interstate merger transaction to be taxed at a rate which is different from or discriminates in any way against a bank, savings association, or branch of either, which is chartered in this state. The Oklahoma Tax Commission is hereby authorized to adopt policies and procedures consistent with the provisions of this subsection.

N. An operating subsidiary of a bank which engages in the business of owner-occupied home mortgage lending shall not be considered a branch under this section in order to conduct such lending operation at any location.

SECTION 8. AMENDATORY 6 O.S. 1991, Section 1010, as amended by Section 16, Chapter 351, O.S.L. 1995 (6 O.S. Supp. 1998, Section 1010), is amended to read as follows:

Section 1010. A. ~~Establishment.~~ Any bank or trust company qualified to act as a fiduciary in this state may:

1. Establish one or more common trust funds for the exclusive purpose of furnishing investments to itself as fiduciary, to itself and others as cofiduciaries, or to another bank or trust company which is a subsidiary of the same bank holding company as fiduciary or cofiduciary for estates, guardianships, and all other fiduciary relationships now in existence or hereafter created which require or authorize investment of trust funds; and

2. Invest funds which it lawfully holds for investment in interests in such common trust funds, unless:

a. the investment is prohibited by the instrument, judgment, decree, or order creating the fiduciary relationship,

b. in the case of cofiduciaries, the bank or trust company fails to procure the consent of its cofiduciary or cofiduciaries to such investment,

c. the bank or trust company is not at all times in full charge of the full management of the fund, or

d. a cofiduciary or co-trustee has the right to interfere in the management of the common trust funds.

B. ~~Common trust fund investments.~~ 1. The bank or trust company shall not mingle its own funds with common trust funds. Each trust, estate or account owning an interest in such common trust fund shall be deemed to own a proportionate share of each

asset of the fund. In determining whether the investment by the trust, estate, or account in such common trust fund is a proper investment for assets held in a fiduciary account, the bank or trust company may consider the common trust fund as a whole and shall not, for example, be prohibited from making the investment if any one or more of the assets of the common trust fund is nonincome producing or might not otherwise be considered a proper investment for a fiduciary account.

2. When making investment decisions pursuant to this subsection, the bank or trust company shall be bound by the provisions of the Oklahoma Trust Act and the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law.

3. Nothing in this subsection shall in any fashion diminish the responsibility of the bank or trust company to carry out its responsibilities and duties pursuant to the standard of care of a fiduciary in handling trust funds.

C. ~~Common trust fund of bank having trust powers to be audited annually.~~ A bank or trust company administering a common trust fund shall keep proper records, which in addition to all other necessary and proper matters shall show at all times the proportionate interest of each trust in the common trust fund, and, at least once during each period of twelve (12) months, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank or trust company. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit, which shall show the valuation placed on each item on such list by the bank or trust company as of the date of the audit, a statement of purchases, sales and any other investment changes, and of income and disbursements since the last audit, and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to

the common trust fund. The bank or trust company administering a common trust fund may charge a reasonable fee for the management of the common trust fund provided that ~~the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by the bank or trust company to a participant, exceed the total of compensation which would have been charged to said participant if no assets of said participant had been~~:

1. The fee is disclosed in the report of the audit of the common trust fund; and

2. The amount of the fee does not exceed an amount commensurate with the value of legitimate services of tangible benefit to the participating fiduciary accounts that would not have been provided to the accounts were they not invested ~~in participations~~ in the fund.

The bank or trust company shall absorb the costs of establishing or reorganizing a common trust fund. The bank or trust company shall send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the trusts participating in the common trust fund ordinarily would be rendered, or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

D. ~~Common trust fund court proceedings.~~ Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the district court, secure approval of such an accounting after such notice, and on such conditions as the court may establish.

SECTION 9. AMENDATORY Section 6, Chapter 104, O.S.L. 1998 (6 O.S. Supp. 1998, Section 1706), is amended to read as follows:

Section 1706. Notwithstanding any other provision of ~~this act~~ the Multistate Trust Institutions 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. Exercising powers pursuant to the Oklahoma Charitable Fiduciary Act, and the company is a corporation which is recognized pursuant to Section 501(c)(3) of the Internal Revenue Code as being organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes; and

14. 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~~ 1724 of this ~~act~~ title:

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 10. AMENDATORY 6 O.S. 1991, Section 2107, as last amended by Section 1, Chapter 74, O.S.L. 1998 (6 O.S. Supp. 1998, Section 2107), is amended to read as follows:

Section 2107. A. Before any license is issued or renewed, the applicant or licensee shall pay an annual license fee in the amount of Two Hundred Dollars ($200.00), plus Ten Dollars ($10.00) for each location within this state at which checks of the licensee are issued or sold. However, such annual fee shall not exceed Two Thousand Dollars ($2,000.00) per licensee. With respect to license renewals, every licensee, on or before each June 1, shall pay the annual license fee for the succeeding fiscal year commencing July 1.

B. The Commissioner shall issue a license certificate to a licensee satisfying the requirement therefor. The license certificate shall be displayed prominently and be available for inspection upon demand at each location of the licensee at which checks of the licensee are to be issued or sold. It shall be the responsibility of the licensee to provide a copy of the original license certificate to the agent at each location for display. Any location failing to display a license certificate may be prohibited by the Commissioner from selling checks if the agent at such location fails or refuses to comply with such display requirement after receipt of written notice from the Commissioner; provided, the Commissioner shall provide the licensee with a copy of ~~said~~ the written notice and shall also notify the licensee in writing of any additional action proposed or taken by the Commissioner.

C. A license issued hereunder shall remain in effect until surrendered by the licensee or revoked, and may be renewed from year to year upon payment of the fee required in subsection A of this section, provided the licensee continues to comply with all provisions of Section 2101 et seq. of this title and of all regulations hereunder.

D. The requirements of this section shall not apply to those locations where checks of the licensee are issued or sold which are governmental departments or financial institutions fully exempt from the provisions of the Sale of Checks Act pursuant to Section 2104 of this title.

E. Fees collected pursuant to this section shall be deposited in the State Banking Department revolving fund pursuant to Section 222 of this title.

SECTION 11. AMENDATORY 6 O.S. 1991, Section 2110, as amended by Section 2, Chapter 74, O.S.L. 1998 (6 O.S. Supp. 1998, Section 2110), is amended to read as follows:

Section 2110. Each licensee under ~~this act~~ the Sale of Checks Act shall at all times maintain a minimum net worth of at least Two Hundred Seventy-five Thousand Dollars ($275,000.00) in order to issue or sell checks at one (1) to three hundred (300) locations, Five Hundred Thousand Dollars ($500,000.00) in order to issue or sell checks at three hundred one (301) to five hundred (500) locations, One Million Five Hundred Thousand Dollars ($1,500,000.00) in order to issue or sell checks at five hundred one (501) to eight hundred (800) locations, or Three Million Dollars ($3,000,000.00) in order to issue or sell checks at over eight hundred (800) locations. Net worth must be demonstrated annually by filing with the Commissioner, at the time of application for a license and at each time of license renewal, the most current annual audited financial statement of the licensee certified by a licensed public accountant holding a permit to practice in this state or by a certified public accountant. For purposes of this section, a financial statement shall be deemed to be current if it is no more than twelve (12) months old. Financial statements may be submitted to the Commissioner at any time in order to maintain a current status. The Commissioner may require, upon request, a more current statement than the last statement submitted by the licensee.

SECTION 12. AMENDATORY 6 O.S. 1991, Section 2111, is amended to read as follows:

Section 2111. Unless a licensee shall have on file in the office of the Commissioner a bond in the maximum amount required under Section 2108 of this title, or shall have deposited securities equal to such amount as provided in subsection (b) of Section 2109 of this title, such licensee shall on or before the first day of September and the first day of March each year file a report with the Commissioner for the preceding one-half (1/2) calendar year. Such report shall, if the Commissioner requests, list the name and address of each agent, subagent or representative authorized by the licensee, as of the close of business on the last day of the one-half (1/2) calendar year preceding such report, to engage in the sale of checks of which the licensee is the issuer. The Commissioner may require that such report include the ~~annual~~ dollar amount of checks sold by the licensee in ~~the State of Oklahoma~~ this state during the preceding one-half (1/2) calendar year or the average amount of outstanding liabilities of such licensee from business for which ~~he~~ the licensee is licensed hereunder or both amounts. The report shall be subscribed and sworn to by the licensee or an officer of the licensee. No reports shall be required pursuant to this section unless specifically requested by the Commissioner.

SECTION 13. AMENDATORY 6 O.S. 1991, Section 2112, is amended to read as follows:

Section 2112. Each licensee shall keep such books, accounts and records as will enable the Commissioner to determine the proper amount of the bond and license fee to be required of such licensee. Each licensee who does not maintain in force a bond in the maximum amount required by Section 2108 of this title or keep on deposit securities equal to such amount as provided in subsection (b) of Section 2109 of this title shall submit to the Commissioner on a

monthly basis a report which shall include ~~a current financial statement and~~ a statement of the gross sales of money orders from the previous month.

SECTION 14. AMENDATORY 6 O.S. 1991, Section 2113, as last amended by Section 23, Chapter 36, O.S.L. 1995 (6 O.S. Supp. 1998, Section 2113), is amended to read as follows:

Section 2113. A. The State Banking Commissioner may examine the books and records of each licensee ~~at least once a year~~ as often as the Commissioner deems advisable for the purpose of determining the amount of the bond to be filed and the amount of the license fee to be paid by such licensee and to determine whether the licensee is in compliance with all applicable requirements of law. For that purpose, the Commissioner shall have free access to the offices and places of business and to such records of such licensee that relate to the business for which the licensee is licensed under Section 2101 et seq. of this title.

B. There shall be paid to the Commissioner for such examination a fee of Fifty Dollars ($50.00) per hour for each qualified representative of the Commissioner required to conduct the examination; provided that whenever it shall be necessary for the Commissioner to travel out of this state to make such examination, the full expense of such examination shall be paid by the licensee.

C. In lieu of any examination which the Commissioner shall be authorized to make hereunder, the Commissioner may accept the audit of a licensed public accountant holding a permit to practice in this state or a certified public accountant, provided that:

1. The costs of such audit shall be borne by the licensee;

2. The scope of such audit shall be at least equal to the scope of the examination required by the Commissioner;

3. The Commissioner shall have received prior notice in writing that the licensee is having the audit prepared in lieu of examination by the Commissioner; and

4. The Commissioner shall have given prior approval of the licensed public accountant holding a permit to practice in this state or the certified public accountant making the audit.

D. The Commissioner may contract with qualified licensed auditors to conduct any examinations authorized under this section.

E. All license and investigation fees herein provided for shall be deposited in the State Banking Department revolving fund pursuant to Section 222 of this title.

SECTION 15. This act shall become effective November 1, 1999.

Passed the House of Representatives the 17th day of February, 1999.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

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President of the Senate