

ENGROSSED SENATE
BILL NO. 518

By: Wilkerson of the Senate
and
Plunk of the House

[banks and trust companies - definitions - defining
term -

effective date]

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 102, as last amended by Section 2, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 1998, Section 102), is amended to read as follows:

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

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

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

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

4. "Banking company" means any bank;

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

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

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

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

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

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

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

12. "Compliance review committee" means:

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

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

14. "Confusingly similar name" means:

- a. as applied to the name of any bank, a name which is identical to that of any other bank located within this state, or a name which:
 - (1) contains one or more of the following words with or without the words "State," "National," or "Trust": American, Central, Citizens, City, Commerce, Commercial, Community, Exchange, Farmers & Merchants, First, Guaranty, Oklahoma, Peoples, Security or United,
 - (2) does not contain a geographical name (other than "Oklahoma") descriptive of the immediate location of the bank (street, town, city, county or other local geographical name),
 - (3) does not contain other unique or clearly distinguished words or marks, and
 - (4) is not a federally registered trade name, trademark or service mark owned by or licensed to the particular bank, or
- b. as applied to the name of any person not a bank, a name which is confusingly similar in spelling or wording or sound to the name of any bank located anywhere within this state, if such name would tend to suggest falsely to the public that the person is a

bank or is affiliated with the bank, directly or indirectly. However, nothing contained in this subsection shall prohibit the use of a similar name by a corporation which is in a relationship to the bank of parent, subsidiary, brother-sister corporation or other commonly controlled company.

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

15. "Consumer banking electronic facility" means any electronic device owned, operated, leased by or on the behalf of a bank, savings association, or credit union other than a telephone or modem operated by a customer of a depository institution, to which a person may initiate an electronic fund transfer. The term includes without limitations, a point-of-sale terminal, automatic teller machines, automated loan machines, video banking centers, or any other similar electronic devices;

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

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

18. "Converting bank" means a bank converting from a state to a national bank, or the reverse;

19. "Court" means a court of competent jurisdiction;

20. "Department" means the Department of Banking of this state created by this Code;

21. "Deposits" means all demand, time and savings deposits of individuals, partnerships, corporations, the United States and states and political subdivisions of the United States, deposits of banks, foreign governments, institutions, deposits held by foreign banking offices or corporations organized pursuant to 12 U.S.C., Sections 601 through 604a, or Sections 611 through 631, as amended.

Determinations of deposits shall be made by the Commissioner by reference to regulatory reports of condition or similar reports filed by banks or savings associations with state or federal regulatory agencies;

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

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

24. "Executive officer", when referring to a bank, out-of-state bank, or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, the chairman of

the board of directors, chairman of the executive committee, the president, any vice-president, the trust officer, the treasurer, the cashier, the comptroller and the secretary, or any person who performs the duties appropriate to those offices;

25. "Existing bank" means an institution open to the public and conducting banking business not less than one (1) full business day;

26. "Federal Reserve Act" means the Act of Congress approved December 23, 1913, (38 Stat. 251), as amended;

~~26.~~ 27. "Federal Reserve Bank" means the Federal Reserve Banks created and organized under authority of the Federal Reserve Act;

~~27.~~ 28. "Federal Reserve Board" means the Board of Governors of the Federal Reserve System created and described in the Federal Reserve Act, as amended;

~~28.~~ 29. "Fiduciary" means original or successor trustee of an expressed or implied trust, including, but not limited to, a resulting or constructive trust, special administrator, executor, administrator, administrator common trust agreement, guardian, guardian-trustee or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust acting alone or with others;

~~29.~~ 30. "General obligation" means obligations of the State of Oklahoma or a political subdivision of this state and of any other state or political subdivision thereof supported by the full faith and credit of the obligor. It includes all obligations payable from a special fund when the full faith and credit of a state or any political subdivision of a state is obligated for payment into the fund of amounts which will be sufficient to provide for all required payments in connection with the obligation. It implies an obligor possessing resources sufficient to justify faith and credit;

~~30.~~ 31. "Good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized;

~~31.~~ 32. "Insolvent" means that the actual cash market value of a bank's assets is insufficient to pay its liabilities other than its capital stock, surplus and undivided profits, or that the bank is unable to meet the demands of its creditors in the usual course of business;

~~32.~~ 33. "Insured depository institution" means any bank or savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

~~33.~~ 34. "Interstate merger transaction" means a merger between two banks, two savings associations or a bank and a savings association, one of which is chartered by or has its main office located in this state, and the other of which is an out-of-state bank as defined in this section;

~~34.~~ 35. "Investment securities" means marketable obligations in the form of bonds, notes or debentures which are commonly regarded as investment securities. It does not include investments which are predominantly speculative in nature;

~~35.~~ 36. "Item" means any instrument for the payment of money even though not negotiable, but does not include money;

~~36.~~ 37. "Legal newspaper" means a newspaper qualified to publish legal notices under the provisions of Section 106 of Title 25 of the Oklahoma Statutes;

~~37.~~ 38. "Loan review committee" means a person or group of persons who, on behalf of an insured depository institution, reviews loans held by such institution for the purpose of assessing the credit quality of the loans, compliance with the loan policies of such institution, and compliance with the applicable state and federal laws, regulations and rules;

~~38.~~ 39. "Local media" means:

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

~~39.~~ 40. "Main bank" means the office location which has been designated by the State Banking Commissioner or Comptroller of the Currency as the main office of a bank;

~~40.~~ 41. "Main office" means either the main bank or the main office location of a savings association;

~~41.~~ 42. "Managing officer" means the chief executive officer of the bank;

~~42.~~ 43. "Member bank" means any national bank, state bank or banking and trust company which becomes a member of the Federal Reserve System;

~~43.~~ 44. "Merger" includes consolidation;

~~44.~~ 45. "Military banking facility" means a facility maintained by a bank upon a military installation, provided the facility must be within the confines of a military reservation and located upon property owned or leased by the United States government;

~~45.~~ 46. "Mobile facility" means any place of business separated from the main office or a branch office of a bank at which deposits are received, checks paid, or money lent and which is designed to be moved, picked up, rolled, pulled or driven. A mobile facility is

prohibited from operation except for use at an institution of higher education as set forth in subsection B of Section 501.1 of this title;

~~46.~~ 47. "Multibank holding company" means an Oklahoma corporation which directly or indirectly owns or controls two or more banks, two or more bank holding companies, or one or more of each as defined in this section;

~~47.~~ 48. "National Bank Examiner" or "Federal Bank Examiner" means any person employed as a bank examiner by the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Federal Reserve Board or Bank;

~~48.~~ 49. "Office" means any place at which a bank or an out-of-state bank transacts its business or conducts operations related to its business;

~~49.~~ 50. "Officer", when referring to a bank, out-of-state bank or trust company, means any person designated as such in the bylaws and includes, whether or not so designated, any executive officer, the chairman of the board of directors, the chairman of the executive committee, and any trust officer, assistant trust officer, assistant vice-president, assistant treasurer, assistant cashier, assistant comptroller, assistant secretary, auditor or any person who performs the duties appropriate to those offices;

~~50.~~ 51. "Order" means all, or any part, of the final disposition, whether affirmative, negative, injunctive or declaratory in form, by the Commissioner or the Banking Board, of any matter other than the making of regulations of general application;

~~51.~~ 52. "Out-of-state bank" means a national bank or a state or federal savings association which has its main office located in a state other than Oklahoma, or a bank chartered by a state other than Oklahoma;

~~52.~~ 53. "Out-of-state bank holding company" means a bank holding company which is not incorporated in this state and which directly or indirectly owns or controls one or more banks or out-of-state banks as defined in this section;

~~53.~~ 54. "Person" means an individual, group of individuals, board, committee, partnership, firm, association, corporation or other entity;

~~54.~~ 55. "Political subdivision" includes a county, city, town or other municipal corporation, a public authority, and generally any publicly owned entity which is an instrumentality of the state or a municipal corporation;

~~55.~~ 56. "Principal place of business of a bank or a bank holding company" means the state in which the total deposits of the bank or the bank subsidiaries of the bank holding company are the largest;

~~56.~~ 57. "Reason to know" means that upon the information available a person of ordinary intelligence in the particular business, or of the superior intelligence or experience which the person in question may have, would infer that the fact in question exists or that there is such a substantial chance of its existence that, if exercising reasonable care with reference to the matter in question, conduct would be predicated upon the assumption of its possible existence;

~~57.~~ 58. "Resulting bank" means the combined banks and trust companies carrying on business upon completion of a merger;

~~58.~~ 59. "Retailer" means a person, corporation or partnership, primarily engaged in the sale of goods at retail to the general public;

~~59.~~ 60. "Savings association" means any savings and loan association or savings bank chartered under the laws of this state or the laws of the United States authorized to engage in the savings and loan business with its main office located in this state;

~~60.~~ 61. "Savings association branch" means any place of business separated from the main office of a savings association at which deposits are received, checks paid or money lent;

~~61.~~ 62. "Subsidiary" with respect to a specified bank holding company or multibank holding company means a subsidiary as the term is defined in the Federal Reserve Bank Holding Company Act of 1956, as amended, 12 U.S.C., Section 1841; and

~~62.~~ 63. "Trust company" means:

- a. any person doing a trust company business as set forth in this Code except an incorporated or unincorporated organization which is organized under Section 501(c)(3) of the Internal Revenue Code as being organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes when exercising powers pursuant to the Oklahoma Charitable Fiduciary Act and the Oklahoma General Corporation Act, and
- b. the trust departments of banks authorized to engage in the trust company business.

SECTION 2. This act shall become effective November 1, 1999.

Passed the Senate the 10th day of March, 1999.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1999.

Speaker of the House of Representatives