

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

HOUSE BILL NO. 1643

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AS INTRODUCED

An Act relating to banks and trust companies; 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), which relates to powers of banks and trust companies; deleting certain exclusion from powers of banks and trust companies; amending 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), which relates to branch banking; deleting certain restrictions for establishing branch banks; removing certain restrictions regarding relocations of branch banks; and providing an effective date.

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

SECTION 1. 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 Code 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;

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;~~

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

47-1-5273 JAF 6/12/15