

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1469

By: Blackburn

COMMITTEE SUBSTITUTE

An Act relating to banks; amending 6 O.S. 1991, Sections 303, as last amended by Section 11, Chapter 205, O.S.L. 2000, 305, as amended by Section 23, Chapter 111, O.S.L. 1997, 406, as last amended by Section 41, Chapter 111, O.S.L. 1997, 714, as last amended by Section 22, Chapter 205, O.S.L. 2000, and 901, as last amended by Section 76, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 2000, Sections 303, 305, 406, 714 and 901), which relate to the organization and regulation of banks; deleting certain organization provisions; restricting corporate name in certain circumstances; requiring compliance with certain section of law; allowing Commissioner discretion as to when to require certain examinations; allowing for designation of beneficiary and payment of proceeds from certain accounts; and providing an effective date.

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

SECTION 1. AMENDATORY 6 O.S. 1991, Section 303, as last amended by Section 11, Chapter 205, O.S.L. 2000 (6 O.S. Supp. 2000, Section 303), is amended to read as follows:

Section 303. A. One or more persons eligible by the Oklahoma Banking Code or by federal law to own and control a bank or trust company shall file with the State Banking Commissioner, in a method as required by the Commissioner, an application for authority to organize setting forth the information required by Section 305 of this title.

B. Each organizer shall subscribe and pay in full in cash for stock having a total subscription price of not less than one percent (1%) of the minimum capital required by Section 303.1 of this title.

~~C. In lieu of the application method set forth in subsections A and B of this section, a bank and multibank holding company which meets the requirements of subsection C of Section 502 of this title may file with the Commissioner, in a method as required by the Commissioner, an application for authority to organize a bank setting forth the information required by Section 305 of this title.~~

~~D.~~ An application fee in an amount prescribed by Board rule shall accompany the application. The fee is payable from the organizational expense fund and is nonrefundable.

SECTION 2. AMENDATORY 6 O.S. 1991, Section 305, as amended by Section 23, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 2000, Section 305), is amended to read as follows:

Section 305. ~~An individual~~ A person seeking authority to organize a state bank or trust company shall submit the original and ten copies of an application for authority to organize a state bank or trust company. Two copies of the proposed certificate of incorporation and proposed bylaws shall be filed with the application. The application and certificate of incorporation shall be signed under oath by each of the organizers.

A. Contents of application. The application shall include the following information:

1. The proposed location;
2. The amount of the capital stock and the class or classes of capital stock proposed to be issued;
3. The corporate name, which shall not be ~~the same name used by any corporation previously organized in the community in which the proposed bank is to be located, or any imitation of such name.~~ The name shall not be confusingly similar to that of any existing institution in the proposed community;
4. The names of the subscribers to the capital stock and the amount of stock to which each subscribed;

5. The names of the persons, partnerships, associations, or corporations which propose to own or control more than one-half (1/2) of the capital stock;

6. The names of the proposed directors;

7. Evidence of the character, financial responsibility and ability of the organizers and proposed directors;

8. Evidence of the need and advisability of granting such authority;

9. The past and present connection with any bank or trust company, other than as a customer on terms generally available to the public, of each proposed director and each subscriber to more than five percent (5%) of the capital stock; and

10. Any other information which the Commissioner may require.

B. Statement to be signed under oath. The application shall contain a statement that the requirements of Sections 303 and 304 of this title have been met. The statement shall be signed by the organizers and verified under oath.

C. Proposed Certificate of Incorporation. The proposed certificate of incorporation shall contain the following:

1. The name of the bank or trust company;

2. If the bank is to exercise trust powers, a statement to that effect;

3. The business street address, including city or town, and county in which it is to be located;

4. The amount of capital, the number of shares of each class, the relative preferences, powers and rights of each class, the par value of the shares of each class and the amount of the paid-in surplus;

5. A statement whether voting for directors shall or shall not be cumulative and the extent of the preemptive rights of stockholders;

6. The names and places of residence of the organizers and the number of shares subscribed by each;

7. The term of its existence, which shall be perpetual;

8. The board of directors of the proposed bank or trust company who shall serve until the next annual meeting of the stockholders, or until their successors are regularly elected and qualified; and

9. Such other proper provisions to govern the business and affairs of the bank or trust company as may be desired by the organizers.

SECTION 3. AMENDATORY 6 O.S. 1991, Section 406, as last amended by Section 41, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 2000, Section 406), is amended to read as follows:

Section 406. A. Change of name. A bank or trust company, by majority vote of the outstanding voting stock, may upon written notice to and may after obtaining approval by the Commissioner change its corporate name by appropriate amendment of its certificate of incorporation.

B. Change in location. 1. An application to change a bank or trust company's main office location must be authorized by majority vote of the outstanding voting stock. The application shall be submitted upon a form provided by the Commissioner, and shall contain a copy of the resolution adopted by the stockholders at the stockholders' meeting authorizing the proposed change in location, and shall be verified by the president or secretary of the corporation. An application fee in an amount provided by Board rule shall accompany the application.

2. If the applicant bank's deposits are insured by the Federal Deposit Insurance Corporation, the Commissioner may condition the approval upon the approval of the Federal Deposit Insurance Corporation.

3. The Commissioner may, in the discretion of the Commissioner, approve the application and authorize amendment of the certificate of incorporation.

C. Change in number and par value of shares. Upon application of a bank or trust company authorized by a majority vote of the outstanding voting stock to amend its certificate of incorporation by changing the number or par value of shares, the Commissioner shall approve the application and authorize amendment unless the change will inequitably affect the interest of any stockholders and the bank or trust company does not have sufficient surplus and undivided profits to pay dissenting stockholders the fair value of their shares and have remaining adequate capital as determined by the Commissioner.

D. Bank's abandonment of trust powers. Upon application approved by majority vote of the outstanding voting stock authorizing the abandonment of its trust powers, and upon compliance with Section 1017 of this title, the Commissioner may, in the discretion of the Commissioner, approve the application and permit amendment of the applicant's certificate of incorporation deleting trust powers.

E. Other amendments. The Commissioner may, in the discretion of the Commissioner, permit amendments to the applicant's certificate of incorporation in addition to those specifically set forth in this section and in Section 405 of this title, if the Commissioner finds and determines the public and interested parties would be served by the approval of such amendments.

F. Right of dissent. Shareholders of banking corporations shall have the right of dissent to corporate action, in the same manner as provided by Section 1104 of this title with respect to the adoption of the following type of amendments to the applicant's certificate of incorporation:

1. With respect to holders of a class of stock, a decrease in the par value per share of the outstanding shares of such class of stock, or a reverse stock split that decreases the aggregate par value of a shareholder's total shares of the affected class of stock;

2. A change of the main office location to a different town or city;

3. With respect to preferred shareholders, a conversion of preferred stock into common stock, other than in accordance with conversion features, if any, which were contained in the terms of the preferred stock when it was originally issued; and

4. With respect to preferred shareholders, any other amendment which would modify preferred stock to reduce the dividend rate, to make cumulative dividends noncumulative, to reduce the redemption or liquidation price, to eliminate or adversely affect any conversion rights or to eliminate or diminish any voting rights related thereto.

The provisions of this subsection shall not apply to transactions which are subject to dissenters' rights as provided by Sections 1104 and 1109 of this title. Shareholders of banking corporations shall also be entitled to appraisal rights granted with respect to any type of transaction pursuant to the provisions of the Oklahoma General Corporation Act, except for transactions subject to dissenters' rights as provided by the provisions of this section and Sections 1104 and 1109 of this title.

SECTION 4. AMENDATORY 6 O.S. 1991, Section 714, as last amended by Section 22, Chapter 205, O.S.L. 2000 (6 O.S. Supp. 2000, Section 714), is amended to read as follows:

Section 714. A. The board of directors of a bank shall meet at least once every month and the board of directors of a trust company shall meet at least once every quarter. Board members of the bank may participate in such meetings by teleconference, video

conference, or other means by which any board member not physically present at a meeting location may vote and otherwise participate in the meeting and be aware of all communication and business being transacted at the meeting at the same time as it occurs. The State Banking Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and a record of all votes of the directors that would be pertinent to the business of the bank, to any officer, or to any stockholder. A copy of the minutes of each meeting of the board of directors shall be furnished to the Commissioner within forty (40) days after the board meeting. A copy shall be signed by the chairman of the board or the secretary to the board and retained at the bank. The minutes may be transmitted to the Commissioner electronically.

B. The board of directors of each bank shall review at least monthly and the board of directors of each trust company shall review at least quarterly written reports prepared by the president or other officer of the corporation setting forth such transactions occurring during the calendar month or quarter, as appropriate, preceding the meeting as the Commissioner shall require by appropriate regulations.

C. The board of directors of every bank and trust company shall examine, at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the corporation including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner ~~prescribes~~ may require. However, upon request by a bank or trust company, the Commissioner may allow the examination called for by this subsection to occur at intervals less frequent than called for in this subsection or may condition the requirement of such examination upon the occurrence of some event. A report of

the examination shall be submitted promptly to the Commissioner and shall embody such information as the Commissioner requires. The board of directors may provide that such examination shall be conducted by a committee of not less than three directors, by certified public accountants, or by independent auditors responsible only to the board of directors. Such examination shall be made when practicable without the assistance of the executive officers of the bank or trust company. Such report of examination shall be reviewed by the directors at the next meeting of the board of directors.

D. A bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No investment shall be made, retained or disposed of without the approval of a committee to which the bank has delegated investment or review responsibility. The committee, in making investment decisions, shall be subject to the provisions of the Oklahoma Uniform Prudent Investor Act. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions.

E. Every official communication directed by the Commissioner or any examiner to any bank or trust company or to any officer thereof, relating to an investigation or examination conducted by the

Department or containing suggestions or recommendations as to the conduct of the business of the bank or trust company, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in such form and in such manner as may be prescribed and directed by the Commissioner. No officer of any bank or trust company shall fail to comply with this subsection.

SECTION 5. AMENDATORY 6 O.S. 1991, Section 901, as last amended by Section 76, Chapter 111, O.S.L. 1997 (6 O.S. Supp. 2000, Section 901), is amended to read as follows:

Section 901. A. When a deposit has been made or shall hereafter be made in any bank in the names of two or more persons, payable to any of them or payable to any of them or the survivor, such deposit, or any part thereof, or any interest thereon, may be paid to either of the persons, whether one of such persons shall be a minor or not, and whether the other be living or not; and the receipt or acquittance of the person so paid shall be valid and sufficient release and discharge to the bank for any payment so made.

B. 1. When a deposit has been made or shall hereafter be made in any bank using the terms "Payable on Death" or "P.O.D.", such deposits shall be payable on the ~~designated person's~~ death of the account owner to a trust designated in the deposit account agreement as the "P.O.D." beneficiary, or to an individual or individuals named beneficiary if living and if not living, to the named ~~beneficiary's~~ estate of the beneficiary, notwithstanding any provision to the contrary contained in Sections 41 through 57 of Title 84 of the Oklahoma Statutes. Such deposit shall constitute a contract between the ~~depositor~~ account owner, (or owners, if more than one) and the bank that upon the death of the ~~named~~ last surviving owner of the account, and payment of account proceeds to any secured party with a valid security interest in the account, the

bank will hold the funds for or pay them to the named beneficiary or the estate of the named beneficiary.

2. In order to designate multiple payable-on-death beneficiaries for a deposit account, the account should be styled as follows:

"(Name of Account Owner), payable on death (or P.O.D.) to (Name of Beneficiary), (Name of Beneficiary), and (Name of Beneficiary, in equal shares.)"

3. Adjustments may be made in the styling, depending upon the number of owners of the account, to allow for survivorship rights, and the number of beneficiaries. It is to be understood that each beneficiary is entitled to a proportionate share of the account proceeds ~~upon~~ only after the owner's death of the last surviving account owner, and payment of account proceeds to any secured party with a valid security interest in the account. In the event of the death of a beneficiary prior to the death of the owner, the ~~beneficiary's share~~ of the beneficiary shall go to the ~~beneficiary's~~ estate of the beneficiary. It is not permissible for an account to designate unequal shares for different payable-on-death beneficiaries.

4. A bank may require the owner of an account to provide an address for any payable-on-death beneficiary. If the P.O.D. account is an interest-bearing account and the funds are not claimed by the payable-on-death beneficiary or beneficiaries within sixty (60) days after the death of the last surviving account holder, or after the bank has notice of the ~~account holder's~~ death of the last surviving account holder, whichever is later, the bank has the right to convert the account to a non-interest-bearing account.

5. No change in the designation of a named beneficiary shall be valid unless executed by the owner of the fund and in the form and manner prescribed by the bank; however, this section shall be

subject to the provisions of Section 178 of Title 15 of the Oklahoma Statutes.

6. The receipt or acquittance of the named beneficiary so paid or the legal representative of such named beneficiary's estate, if deceased, shall be valid and sufficient release and discharge to the bank for any payment so made, unless, prior to such payment, the bank receives notice in the form and manner required in Section 905 of this title.

C. The provisions of this section shall apply to all forms of deposit accounts, including, but not limited to, transaction accounts, savings accounts, certificates of deposits, negotiable order of withdrawal (N.O.W.) accounts, and M.M.D.A. accounts.

SECTION 6. This act shall become effective November 1, 2001.

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