ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1522

By: Easley, Carey, Blackburn and Piatt of the House

and

Rabon of the Senate

(banking - amending twelve sections in Title 6 - out-of-state banks - fees - amending 18 O.S., Sections 381.15 and 2002 - Limited Liability Company Act -

effective date)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting clause and entire bill and insert

"An Act relating to banks; amending 6 O.S. 2001, Sections 204, 414, 424, 713 and 1111, which relate to the Oklahoma Banking Code; providing for certain supervisory activities; requiring bank or trust company to obtain prior approval of State Banking Commissioner for certain activities; authorizing out-of-state banks to perform certain functions; defining loan production office; defining deposit production office; allowing Commissioner or State Banking Board to approve certain activities of banks or out-of-state banks; defining term; requiring certain filing with Commissioner; requiring approval of Board for certain merger; amending 6 O.S. 2001, Sections 1713, 1714, 1718 and 1722, which relate to trust institutions; designating amount of fees that must be paid by certain entities; amending 18 O.S. 2001, Section 2002, which relates to limited liability companies; deleting prohibition that limited liability company not conduct business as a bank; and providing an effective date.

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

SECTION 1. AMENDATORY 6 O.S. 2001, Section 204, is amended to read as follows:

Section 204. A. In addition to other powers conferred by this Code, the State Banking Commissioner shall have the power to require

a bank, bank holding company or trust company or shareholder, officer, director, or bank employee to:

1. Maintain its accounting system in accordance with such regulations as may be prescribed by the Board or as the Commissioner may prescribe in absence of Board regulations; provided, the accounting system required shall have due regard to the size of the banking and trust organization;

2. Observe methods and standards which the Commissioner may prescribe for determining the value of various types of assets;

3. Charge off the whole or part of an asset which at the time of the Commissioner's action could not lawfully be acquired;

4. Write down an asset to its market value;

5. Record liens and other interest in property;

6. Obtain a financial statement from a borrower to the extent that the bank can do so;

7. Obtain insurance against damage to real estate taken as security;

8. Search, or obtain insurance of, the title to real estate taken as security;

9. Maintain adequate insurance against such other risks as the Commissioner may determine to be necessary and appropriate for the protection of depositors, trust funds and the public; and

10. Cease and desist from engaging in any act or transaction, or doing any act in furtherance thereof, which would constitute a violation of the provisions of the Oklahoma Banking Code, federal banking law or the applicable banking law of another state, or a lawful regulation issued thereunder, or to cease and desist from engaging in any unsafe or unsound banking or trust practice.

B. Before issuing an order provided for in subsection A of this section, the Commissioner shall give reasonable notice of an opportunity for a hearing. However, if the Commissioner makes written findings of fact that the protection of depositors will be

harmed by delay in issuing an order provided for in subsection A of this section, the Commissioner may issue a temporary order pending the hearing on the order provided for in subsection A of this section. The temporary order shall remain in effect until three (3) business days after the hearing on the order provided for in subsection A of this section and shall become final if the bank or trust company subject to the order fails within fifteen (15) days after the receipt of the order to request a hearing to determine whether the temporary order should be modified, vacated, or become final. If a hearing on the temporary order is not held upon written request, the temporary order shall dissolve and the order provided for in subsection A of this section shall not be issued except upon reasonable notice and opportunity for hearing.

C. Any bank or trust company aggrieved by a final order of the Commissioner as provided for in this section may obtain a review of the order by the Board, who shall have the power to affirm, modify, reverse, or stay the enforcement of any order of the Commissioner.

D. The Commissioner may enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one or more bank supervisory agencies with respect to the periodic examination or other supervision of any bank, bank holding company, or branch in this state of an out-of-state state bank, or any branch of an Oklahoma state bank in any other state, and the Commissioner may accept such reports of examination and reports of investigation in lieu of conducting the Commissioner's own examinations or investigations. If such agreements result in the payment of fees, however calculated, by any other bank supervisory agency to the Oklahoma State Banking Department for examination <u>or supervisory</u> activities conducted by Department personnel, whether such ~~examination~~ activity is conducted inside or outside of this state, such fees shall be deposited in the Bank Examination Revolving Fund

established by Section 211.2 of this title. If such agreements result in the payment of fees, however calculated, by the Department to any other bank supervisory agency for examination or supervisory activities conducted by such other bank supervisory agency, whether such ~~examination~~ activity is conducted inside or outside of this state, such fees shall be paid by the Department from the Bank Examination Revolving Fund established by Section 211.2 of this title.

E. The Commissioner may enter into cooperative agreements with other bank regulatory agencies to facilitate the regulation of banks and bank holding companies doing business in this state. The Commissioner may accept reports of examinations and other records from such other agencies in lieu of conducting its own examinations of banks controlled by out-of-state bank holding companies. The Commissioner may take any action jointly with other regulatory agencies having concurrent jurisdiction over banks and bank holding companies or may take such actions independently in order to carry out the responsibilities of the Commissioner.

F. 1. The Commissioner may issue interpretive statements containing matters of general policy for the guidance of state banks and trust companies. The Commissioner may amend or repeal an interpretive statement by issuing an amended statement or notice of repeal of a statement and shall provide notice thereof and make it available to all state-chartered banks and trust companies upon request.

2. The Commissioner may issue opinions in response to specific requests from members of the public or the banking and trust industry directly or through the Deputy Commissioner or the Department's attorneys. The Commissioner may amend or repeal an opinion by issuing an amended statement or notice of repeal of an opinion and shall provide notice thereof and make it available to all state-chartered banks and trust companies upon request, except

that the requesting party may rely on the original opinion if all material facts were originally disclosed to the Commissioner, considerations of safety and soundness of the affected bank are not implicated with respect to further and prospective reliance on the original opinion, and the text and interpretation of relevant, governing provisions of this act have not been changed by legislative or judicial action.

3. An interpretive statement or opinion issued under this section does not have the force of law and is not a rule.

SECTION 2. AMENDATORY 6 O.S. 2001, Section 414, is amended to read as follows:

Section 414. A. 1. A bank or trust company may purchase and hold real estate, equipment, furniture and fixtures necessary for the convenient transaction of its business, the cost of which shall not exceed its capital. This limitation may be exceeded upon written approval of the State Banking Commissioner.

2. ~~A~~ With prior approval of the Commissioner, a bank or trust company may purchase and hold fixtures, facilities and real estate ~~as may be approved by the Commissioner~~, including but not limited to storage facilities, facilities for civic or public use or facilities for the benefit of employees of the bank, bank customers or the community. No banking business of any type shall be engaged in or conducted at such facilities.

3. A bank or trust company may lease out to such tenants as it deems appropriate any portion of its banking house or premises not utilized in the conduct of its banking operations.

4. Upon prior written approval of the Commissioner, a bank or trust company may purchase real estate at a location where the bank or trust company could lawfully establish an office.

5. A state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other

public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall provide that upon its expiration the lessee will become owner of the building or facility.

6. Subject to prior approval by the Commissioner and such conditions and limitations as the Commissioner shall prescribe, which shall be consistent with any rules the State Banking Board may prescribe, a state bank may purchase real estate for the purpose of producing income, sale, or for development and improvement, including the erection of buildings thereon, for sale or rental purposes.

B. 1. A bank or trust company may purchase and hold real estate conveyed to it in satisfaction of debts previously contracted in good faith in the course of business.

2. All such real estate shall be accounted for individually at the lower of the recorded investment in the loan satisfied or its fair market value on the date of the transfer.

3. The recorded investment in the loan satisfied is the unpaid balance of the loan, increased by accrued and uncollected interest, unamortized premium, and loan acquisition costs, if any, and decreased by previous direct write down, finance charges and unamortized discount, if any.

C. Upon notification by the bank to the Commissioner that such conditions exist that require the expenditure of funds for the development and improvement of such real estate, and subject to such conditions and limitations as the Commissioner shall prescribe, the bank may expend its funds to enable such bank to recover its total investment.

D. A bank or trust company may acquire and hold real estate such as it shall purchase at sale under judgment, decree or mortgage foreclosure, under securities held by it.

E. 1. Without the written approval of the Commissioner, real estate acquired in the cases contemplated in subsections B and D of this section may be held for an initial holding period of no longer than five (5) years from the date of acquisition. However, a bank may apply, during the first two (2) years in which the real estate is acquired by the bank, for approval by the Commissioner to retain such real estate for the purposes described in paragraph 6 of subsection A of this section. In the case of approval by the Commissioner, the rules of this subsection shall not apply to such property. In the absence of such application, or if the application is denied by the Commissioner, the rules of this subsection shall apply to the retention of the real estate by the bank.

2. Following the expiration of the initial holding period, one additional extension period of up to five (5) years may be granted upon the written approval of the Commissioner.

3. A bank or trust company must begin to write down the book value for each property held as other real estate owned a minimum of ten percent (10%) each year during the additional extension period. The bank or trust company shall then be required to write off the remaining balance of the other real-estate-owned property at the end of the additional extension period.

4. Banks or trust companies shall be required to keep current appraisals on file to substantiate their other real-estate-owned property book values. A full appraisal or a supplement which updates a full appraisal, not more than twelve (12) months old, shall be considered current for purposes of this paragraph.

5. Banks or trust companies shall also continue efforts to dispose of the real estate at the earliest possible opportunity.

6. At the conclusion of the additional extension period, real estate may be disposed of or carried as prescribed by the Commissioner.

7. For purposes of this section, ownership interests in oil, gas and other subsurface mineral rights other than mere leasehold interests shall be considered real estate. However, notwithstanding the holding limitation of this section or any other provision contained herein, any bank or trust company which on October 15, 1982, held, directly or indirectly, any oil, gas and other subsurface mineral rights, other than mere leasehold interests, that since December 31, 1979, had not been valued on the books of such bank or trust company for more than a nominal amount, may continue to hold such subsurface rights or interest without limitation.

F. Any bank or trust company organized under the laws of this state may invest its funds in the stocks, bonds, debentures or other such obligations of any corporation holding the premises of such bank or trust company, and may make loans to or upon the security of any such corporation, but the aggregate of all such investments and loans together with the investments provided for in subsection A of this section shall not exceed its capital. This limitation may be exceeded upon the written approval of the Commissioner.

G. Every conveyance of real estate and every lease thereof made by a bank or trust company shall have the name of such bank or trust company subscribed thereto, either by an attorney-in-fact, president, vice-president, chairperson or vice-chairperson of the board of directors of such corporation.

H. Nothing in this section shall preclude or limit in any manner investments by a bank permitted under any other section of this Code.

SECTION 3. AMENDATORY 6 O.S. 2001, Section 424, is amended to read as follows:

Section 424. A. Subject to rules promulgated by the Banking Board, a bank or out-of-state bank may utilize employees or agents of the bank or out-of-state bank to originate loans or originate deposit accounts, or both, at locations other than the main office

or a branch office of such bank or out-of-state bank, provided that the loan decision is made and the loan is funded at the main office or a branch office of the bank or out-of-state bank and provided that no deposits shall be accepted or received at the deposit origination office. A bank or out-of-state bank may establish an office location described in this section by making an application to the State Banking Commissioner on a form prescribed by the Commissioner. An application fee of Five Hundred Dollars ($500.00) shall accompany the application.

B. An office shall be considered to be a loan production office if it is open to the public, and employees or agents of the bank or out-of-state bank:

1. Provide loan applications to customers;

2. Facilitate the return of the loan application to the bank or out-of-state bank;

3. Provide promissory notes and/or disclosures to customers;

4. Receive executed notes from customers; or

5. Arrange for the loan proceeds to be delivered to the bank.

C. An office shall be considered to be a deposit production office if it is open to the public, and employees or agents of the bank or out-of-state bank:

1. Provide deposit applications to customers;

2. Facilitate the return of the deposit application to the bank or out-of-state bank;

3. Provide deposit agreements and/or disclosures to customers;

4. Receive executed deposit agreements from customers; or

5. Arrange for the deposited funds to be delivered to the bank.

D. The Commissioner or the Board may, upon written request of a bank or out-of-state bank, designate or approve of specified activities (including a limited number of those described in subsections B and C of this section) that a bank or out-of-state bank may conduct without the facility being considered a loan

production office or deposit production office. For purposes of this section, the word "agent" shall include independent contractors, or any other "institution affiliated party" as that term is defined in 12 U.S.C., Section 1813(u).

SECTION 4. AMENDATORY 6 O.S. 2001, Section 713, is amended to read as follows:

Section 713. A. Directors must require fidelity bonds. The directors of a bank or trust company shall require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank or trust company on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal conduct by them acting independently or in collusion or combination with any person or persons. Such bonds may be in individual, schedule or blanket form, and the premiums therefor shall be paid by the corporation.

B. Other insurance. The said directors shall also require suitable insurance protection to the bank or trust company against burglary, robbery, theft and other insurable hazard to which the bank or trust company may be exposed in the operations of its business on the premises or elsewhere.

C. Annual review of bonds and insurance by board of directors - Insurance - Bonds and insurance subject to approval of Commissioner and to regulations of board. The directors of every bank and trust company shall be responsible for prescribing at least once in each calendar year the amount or penal sum of the bonds and policies specified in this section and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the Commissioner and be subject to his approval. ~~Any~~

Evidence of any and all such bonds shall be filed with the Commissioner as soon as procured.

SECTION 5. AMENDATORY 6 O.S. 2001, Section 1111, is amended to read as follows:

Section 1111. A. Upon approval by the ~~Commissioner~~ Banking Board, and subject to satisfying each of the criteria contained in subsection B of this section and complying with the procedures required by subsection C of this section, a state bank may merge with:

1. Its parent bank holding company;

2. One or more nonbank subsidiaries of its parent bank holding company; or

3. One or more subsidiaries of the state bank.

B. The form and effect of any merger pursuant to this section must be consistent with the following criteria:

1. The state bank must be the resulting entity which is the survivor of the merger;

2. The merger shall not result in any additional branch office of the state bank, unless such additional branch is approved pursuant to the bank's de novo branching authority under Section 501.1 of this title;

3. Any activity carried on by any nonbank company which is a party to the merger shall be terminated at the effective time of the merger unless that activity is permissible for the resulting state bank;

4. Any asset or investment which is held by a constituent nonbank company and which is not permitted to be held by a resulting state bank shall be divested at or before the effective time of the merger, unless the state bank obtains prior approval for a longer divestiture period from the Commissioner in the manner provided in Section 1108 of this title and from appropriate federal banking

agencies in accordance with any applicable federal banking laws or regulations;

5. The merger shall not create an unsafe weakening of the resulting state bank's condition. However, the Board shall have discretion to approve a merger which will have the effect of materially strengthening a weakened bank, even if the resulting state bank's condition or capital will remain less than satisfactory; and

6. The applicant bank shall present an acceptable plan for minimizing or eliminating the potential adverse impact of any significant debt or other direct or contingent liabilities of any nonbank company that will be merged into the resulting state bank.

C. A merger pursuant to this section shall be governed by all of the provisions and procedures of Sections 1102 through 1106 of this title. For this purpose such sections shall be interpreted so far as reasonably applicable as if any nonbank company which is a party to the merger were instead a constituent state bank being merged into the resulting state bank.

SECTION 6. AMENDATORY 6 O.S. 2001, Section 1713, is amended to read as follows:

Section 1713. A. A state trust institution may establish or acquire and maintain trust offices or representative trust offices anywhere in this state. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the Commissioner setting forth the name of the state trust institution, the location of the proposed additional office and whether the additional office will be a trust office or a representative trust office. The state trust institution shall also furnish a copy of the resolution adopted by the board authorizing the additional office and pay ~~the filing~~ a fee~~, if any, prescribed by the Commissioner~~ equal to that for bank branch offices if the office is to be a trust office or the fee equal to that for bank

loan production offices if the office is to be a representative trust office.

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

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

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

SECTION 7. AMENDATORY 6 O.S. 2001, Section 1714, is amended to read as follows:

Section 1714. A. A state bank, a state trust company, or a savings association chartered under the laws of this state may establish and maintain a new trust office or a representative trust office or acquire and maintain an office in a state other than this state. Such a trust institution desiring to establish or acquire and maintain an office in another state under this section shall file a notice on a form prescribed by the Commissioner. The notice shall set forth the name of the trust institution, the location of the proposed office, whether the office will be a trust office or a representative trust office, and whether the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust institution. The trust institution shall also furnish a copy of the resolution adopted by the board

authorizing the out-of-state office, and pay ~~the filing~~ a fee~~, if any, prescribed by the~~ ~~Commissioner~~ equal to that for bank branch offices if the office is to be a trust office or the fee equal to that for bank loan production offices if the office is to be a representative trust office.

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

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

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

SECTION 8. AMENDATORY 6 O.S. 2001, Section 1718, is amended to read as follows:

Section 1718. An out-of-state trust institution desiring to establish and maintain a new trust office or acquire and maintain a trust office in this state pursuant to Sections ~~15~~ 1715 through ~~20~~ 1720 of this ~~act~~ title shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the Commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire the trust office. The filing

of such notice shall be preceded or accompanied by a copy of the resolution adopted by the board authorizing the additional office and ~~the filing~~ a fee~~, if any, prescribed by the Commissioner~~ equal to that for bank branch offices.

SECTION 9. AMENDATORY 6 O.S. 2001, Section 1722, is amended to read as follows:

Section 1722. A. An out-of-state trust institution may establish or acquire and maintain a representative trust office in this state. An out-of-state trust institution ~~not maintaining a trust office in this state and~~ desiring to establish or acquire and maintain a representative trust office shall file a notice on a form prescribed by the Commissioner which shall set forth the name of the out-of-state trust institution, the location of the proposed office, and satisfactory evidence that the notificant is a trust institution. The out-of-state trust institution shall also furnish a copy of the resolution adopted by the board authorizing the representative trust office, and pay ~~the filing~~ a fee~~, if any, prescribed by the Commissioner~~ equal to that for bank loan production offices.

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

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

D. The Commissioner may deny approval of the representative office if the Commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion

without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interests. In acting on the notice, the Commissioner shall consider the views of the appropriate bank supervisory agencies.

SECTION 10. AMENDATORY 18 O.S. 2001, Section 2002, is amended to read as follows:

Section 2002. A limited liability company may be organized under the Oklahoma General Corporation Act for the purpose of carrying on any lawful business, purpose or activity, whether or not for profit, except that a limited liability company may not conduct business as a ~~bank or~~ domestic insurer.

SECTION 11. This act shall become effective November 1, 2003."

Passed the Senate the 8th day of April, 2003.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2003.

_____
Presiding Officer of the House
of Representatives