

ENROLLED HOUSE
BILL NO. 1234

By: Piatt of the House

and

Gumm of the Senate

An Act relating to banks; amending 6 O.S. 2001, Sections 104, 201, 202, 204, as amended by Section 1, Chapter 180, O.S.L. 2003, 209, 211, as amended by Section 4, Chapter 356, O.S.L. 2003, 211.1, as amended by Section 5, Chapter 356, O.S.L. 2003, 308, as amended by Section 8, Chapter 67, O.S.L. 2002, 309, as amended by Section 9, Chapter 67, O.S.L. 2002, 310, as amended by Section 10, Chapter 67, O.S.L. 2002, 405, 414, as amended by Section 2, Chapter 180, O.S.L. 2003, 424, as amended by Section 3, Chapter 180, O.S.L. 2003, 1004, as amended by Section 16, Chapter 67, O.S.L. 2002, 1017, 1018, 1405, 1740, 1741, 2108, 2109 and 2113 (6 O.S. Supp. 2004, Sections 204, 211, 211.1, 308, 309, 310, 414, 424 and 1004), which relate to the Oklahoma Banking Code; adding entity qualified under act; providing for termination by causes defined by Board; allowing Commissioner to appoint deputy commissioners; modifying Board member requirements; modifying meeting dates of Board; allowing for payment of civil penalties; updating references to revolving fund; removing definition; increasing hourly rate; modifying what monies are in certain revolving fund; allowing for request of court reporter at hearing; eliminating capital stock minimum; requiring approval by Commissioner for exemption from effort to dispose of real estate; allowing loan proceeds to be delivered to customer; allowing for use of irrevocable letter of credit; updating language to include securities pledged or purchased; requiring mailing of notice of court order of liquidation of trust; removing application of certain provisions to bank or trust under certain conditions; providing for applicability of Oklahoma Banking Code; providing for payment of fee with exemption request; setting certification fee; allowing for revocation of exempt status under certain conditions; deleting exemption status under certain conditions; providing conditions for issuance of irrevocable letter of credit; changing type of value of security; increasing hourly rate; allowing for certain expenses; amending 8 O.S. 2001, Section 166, which relates to cemeteries; updating reference to revolving fund; repealing 6 O.S. 2001, Section 211.2, as amended by Section 6, Chapter 356, O.S.L. 2003 (6 O.S. Supp. 2004, Section 211.2), which relates to the Oklahoma Banking Department; and providing an effective date.

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

SECTION 1. AMENDATORY 6 O.S. 2001, Section 104, is amended to read as follows:

Section 104. A. The certificates, permits and charters of state banks and trust companies heretofore organized under the laws of the state and existing before August 31, 1965, shall continue in full force and effect. All such state banks and trust companies, and, to the extent applicable, all national banks now or hereafter doing business in this state, shall from August 31, 1965, be subject to the provisions and requirements of this Code in every particular as if organized under this act.

B. Any bank, bank holding company, trust company or business association not holding a charter of authority to engage in banking or trust company business in this state shall register with the Commissioner, on a form provided by the Commissioner and pay a registration fee in an amount set by rule of the Board, all bank or trust-related activities conducted in this state by the bank, bank holding company, ~~or~~ trust company, business association, or any subsidiary or affiliate thereof.

C. Bank or trust-related activities include receiving deposits, transaction accounts, making loans, issuing debentures or other evidence of debt, holding funds or other property in trust, acting in a fiduciary capacity, or conducting in any other manner banking, or bank or trust-related activities.

SECTION 2. AMENDATORY 6 O.S. 2001, 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 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 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 and Assistant Deputy Commissioners. The Budget Director ~~and~~, Credit Union Administrator and Assistant Deputy Commissioners 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~~ for cause as defined by the Board.

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, credit union administrator, budget director, Assistant Deputy Commissioners, 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. The Commissioner shall adopt an appropriate seal as the Seal of the State Banking Commissioner.

2. 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. Whenever it is necessary for the Commissioner to approve any instrument ~~and~~ or to affix the official seal thereto, the Commissioner may charge a fee for affixing the approval of the Commissioner ~~and~~ or 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~~ or to certify such paper, the Commissioner may charge a fee for furnishing such copy, for affixing the official seal on such copy and/or for certifying the same.

SECTION 3. AMENDATORY 6 O.S. 2001, Section 202, is amended to read as follows:

Section 202. A. The Board shall consist of seven (7) members. The Commissioner shall be Chairman and vote only in case of a tie on any question requiring action by the Board.

B. Board - Qualifications. Other than the Commissioner, five members of the Board shall be active officers of state banks or trust companies, one of whom may be an officer or director of a national bank. One member of the Board shall be a citizen of Oklahoma, thirty-five (35) years old or older, who shall not have been in the past or become during the member's service on the Board an officer or stockholder in any banking institution, nor shall such person be related in the first degree to any other person who is or becomes during the term of such member an officer or stockholder in any state-chartered banking institution under the jurisdiction of the Department.

C. Board - Appointment - Qualifications - Successor - Removal. Members of the Board, including the Commissioner, shall be appointed by the Governor with the advice and consent of the Senate; provided, appointments to the Board, and not including the Commissioner nor the member not affiliated in the past or during the member's term with any banking institution, shall only be made of individuals whose names shall be included in a list of twelve names submitted to the Governor by the Executive Committee of the Oklahoma Association of State Banks, a division of the Oklahoma Bankers Association. If a Board member resigns for any reason before his or her term expires under the provisions of this section, the resigning Board member shall notify the Governor in writing and shall submit a copy of his or her letter of resignation to the Commissioner and the Executive Committee of the Oklahoma Association of State Banks. If the Oklahoma Association of State Banks shall not submit such list within thirty (30) days after a vacancy shall occur, then the Governor may appoint, with the advice and consent of the Senate, such person as the Governor may select who shall meet the qualifications set forth in subsection B of this section.

The term of office of each Board member other than the Commissioner shall be six (6) years. The Governor may, after notice, hearing and proceeding in accordance with the Administrative Procedures Act, remove a member for cause.

D. Travel Expense. Each member shall be entitled to be reimbursed for necessary travel expenses pursuant to the State Travel Reimbursement Act.

E. Board Meetings - Quorum - Disqualification. The Board shall meet at least ~~once in each calendar quarter~~ semiannually. The Commissioner may call additional meetings of the Board upon at least twenty-four (24) hours' notice and in any event shall call a meeting upon the written request of two members. Four members of the Board shall constitute a quorum, and action taken by a majority of those voting at any meeting at which a quorum is present shall be the action of the Board. No member shall participate in a proceeding before the Board to which any corporation or partnership of which the member is or was at any time in the preceding twelve (12) months a director, officer, partner, employee, member or stockholder is a party. A member may be disqualified upon the member's own motion from participating in a proceeding for any other cause deemed by the member to be sufficient.

F. Lack of Quorum - Appointment of Acting Members. At any meeting at which a quorum is not present, whether by reason of the inability of a member to participate or the voluntary disqualification of the member, or otherwise, the Governor may designate the Deputy Commissioner, the Attorney General, or the head of any other department of the state government, in that order, as acting members of the Board for the purpose of constituting a quorum, but the Governor shall not designate more acting members than shall be necessary to constitute a quorum.

G. Clerical, Technical and Legal Assistance. Such clerical, technical and legal assistance as the Board may require shall be provided by the Department.

SECTION 4. AMENDATORY 6 O.S. 2001, Section 204, as amended by Section 1, Chapter 180, O.S.L. 2003 (6 O.S. Supp. 2004, 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; and

11. Pay civil money penalties under the same circumstances and conditions applicable to imposition of civil money penalties by the primary federal bank regulatory agency of the bank.

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 person, 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 or supervisory

activities conducted by Department personnel, whether such 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~~ Oklahoma State Banking Department revolving fund pursuant to Section 211.1 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 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~~ Oklahoma State Banking Department revolving fund pursuant to Section 211.1 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 and other entities under the jurisdiction of the Department. 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 5. AMENDATORY 6 O.S. 2001, Section 209, is amended to read as follows:

Section 209. A. 1. The State Banking 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. Upon the conclusion of the examination, the Commissioner

may make and file in the office of the Commissioner a report in detail disclosing the results of such examination or may, on conditions prescribed by the Commissioner, prepare a summary memorandum regarding the results of such examination, and shall, upon request by the bank, mail a copy of such report or memorandum 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, report, or other document prepared as a result 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 Oklahoma State 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, 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. 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, attested by the signatures of at least two of the directors, and shall be retained and made available for inspection upon request of the Commissioner or designated representatives of the Commissioner. Each such report shall exhibit, in detail and under appropriate headings, the assets 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 the power to call for special reports from any bank or trust company whenever, in the judgment of the Commissioner, 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 or reports submitted by banks to the Federal Deposit Insurance Corporation.

C. Every bank or trust company which fails to make and transmit any report required within the discretion of the Commissioner, under the Oklahoma Banking Code, 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~~ Oklahoma State Banking Department revolving fund pursuant to Section 211.1 of this title.

D. 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 five (5) years. Such examination and reports and all other records of operating banks and trust companies in the Department are to be kept confidential, except as permitted by this Code.

SECTION 6. AMENDATORY 6 O.S. 2001, Section 211, as amended by Section 4, Chapter 356, O.S.L. 2003 (6 O.S. Supp. 2004, Section 211), is amended to read as follows:

Section 211. A. 1. The Banking Board shall charge and collect from each bank ~~or~~ and trust company under its supervision ~~not more than~~ an annual fee of One Thousand Dollars (\$1,000.00) which shall be deposited in the Oklahoma State Banking Department revolving fund pursuant to Section 211.1 of this title.

2. The Board shall charge and collect assessments from each bank or trust company under its supervision on each One Thousand Dollars (\$1,000.00) of assets, or major fraction thereof, at rates established by the Board. Assessments shall be deposited in the Oklahoma State Banking Department revolving fund created by Section 211.1 of this title.

3. Effective January 1, 2005, and each year thereafter, twenty percent (20%) of all assessments collected ~~pursuant to this paragraph~~ from state-chartered banks existing as of December 31 of the previous year shall be deposited to the General Revenue Fund of the State Treasury. The Board may charge and collect assessments on an annual basis and may, in addition to any annual assessment, charge and collect a special assessment from each bank or trust company, at rates established by the Board. The annual assessments shall be paid to the Oklahoma State Banking Department no later than the fifth day of February in each year. ~~As used in this paragraph, "assets" shall not include assets held by a trust company in its fiduciary capacity.~~

4. The fee for bank trust departments, which shall be in addition to the assessment collected pursuant to paragraph 2 of this subsection, shall be One Thousand Dollars (\$1,000.00). The fees due under this paragraph shall be paid annually to the Banking Department no later than the fifth day of February in each year and shall be deposited in the Oklahoma State Banking Department revolving fund pursuant to Section 211.1 of this title. Failure to pay within such time any assessment or fee imposed pursuant to this section by its due date will result in a penalty of Fifty Dollars (\$50.00) per day for each day it is in violation of this section, which penalty, together with the amount due under the foregoing provisions of this section, may be recovered in a civil action in the name of the state.

5. All fees not otherwise directed shall be deposited in the Department revolving fund pursuant to Section 211.1 of this title.

B. Whenever it is deemed advisable by the State Banking Commissioner, special examinations of banks, trust companies and any other person under, subject to or proposed to become under or subject to the supervision of the Commissioner shall be conducted. The expenses of the Department necessarily incurred in a special examination, and the expenses of the Department necessarily incurred in a regular examination of a trust company, shall be chargeable to the bank, trust company or person examined at the rate not to exceed ~~Fifty Dollars (\$50.00)~~ Seventy-five Dollars (\$75.00) per hour plus travel expenses as provided by subsection B of Section 201.1 of this title for each of the examining personnel ~~while engaged at such institution.~~ Payments received pursuant to this subsection shall be deposited in the Department revolving fund pursuant to Section 211.1 of this title.

C. Section 211 of Title 62 of the Oklahoma Statutes shall not apply to the Oklahoma State Banking Department, the Banking Board, the Credit Union Board nor the Banking Commissioner.

SECTION 7. AMENDATORY 6 O.S. 2001, Section 211.1, as amended by Section 5, Chapter 356, O.S.L. 2003 (6 O.S. Supp. 2004, Section 211.1), is amended to read as follows:

Section 211.1 There is hereby created in the State Treasury a revolving fund for the Oklahoma State Banking Department. The revolving fund shall consist of all fees and assessments paid to or collected by the Department, including all monies received by the Commissioner under Sections 104, 204, 303, 415, 501.1 and 501.2 of this title and Section 381.16 of Title 18 of the Oklahoma Statutes and those payments required to be deposited in the revolving fund pursuant to Sections 211, 1103, 1206, 2001.2, 2008, 2107 and 2113 of this title, Section 381.15 of Title 18 of the Oklahoma Statutes, and Section 166 of Title 8 of the Oklahoma Statutes. The revolving fund shall be a continuing fund, not subject to fiscal year limitations. Expenditures from the fund shall be made pursuant to the laws of this state and the statutes relating to the Department, and without legislative appropriation. Warrants for expenditures from the fund shall be drawn by the State Treasurer, based on claims signed by an authorized employee or employees of the Department and approved for payment by the Director of State Finance.

SECTION 8. AMENDATORY 6 O.S. 2001, Section 308, as amended by Section 8, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2004, Section 308), is amended to read as follows:

Section 308. A. Notice. When a hearing is permitted before the Commissioner, the Commissioner shall notify interested persons of the date, time and place at which an opportunity to be heard shall be afforded. Interested persons shall include the applicant, the persons requesting a hearing and other persons who have submitted written comments and objections to the Commissioner.

B. Participation in the hearing. Within ten (10) days after the date of notice of hearing, each person desiring to be heard shall notify the Commissioner of such person's intention to participate in the hearing. At least five (5) days prior to the hearing, each participant shall submit to the Commissioner and the applicant a list of witnesses and copies of each exhibit to be offered as the Commissioner may require. Any participant who fails to comply with these deadlines shall be prohibited from participation in the hearing.

C. Presiding officer. The presiding officer at the hearing shall be the Commissioner or the designee of the Commissioner. The presiding officer shall have the authority to appoint a panel to assist the presiding officer.

D. Order of presentation.

1. Opening statements. The applicant and each other participant shall make an opening statement. The length of such statements shall be within the discretion of the presiding officer.

2. Applicant's presentation. Following the opening statements, the applicant shall present any data and materials, oral or documentary of the applicant.

3. Other presentations. Following the applicant's presentation, other interested persons may present their views with respect to the application under consideration.

4. Summary statements. After all the above presentations have been concluded, the participants may make short and concise summary statements reviewing their positions.

E. Witnesses. The obtaining of witnesses is the responsibility of the participants. All witnesses will be present of their own volition, but any person appearing as a witness may be subject to questioning by any participant, by the presiding officer or by any member of the panel. The refusal of a witness to answer questions may be considered by the presiding officer in determining the weight to be accorded the testimony of that witness. Witnesses shall not be sworn.

F. Evidence. The presiding officer shall have the authority to exclude witnesses, evidence, data or materials which the presiding officer deems to be improper, irrelevant, or duplicitous. Formal rules of evidence shall not be applicable to these hearings. Documentary material must be of a size consistent with ease of handling, transportation and filing, and must be provided for each participant by the party presenting such evidence. While large

exhibits may be used during the hearing, copies of such exhibits must be provided by the party in reduced size for submission as evidence. Ten copies of all such documentary evidence shall be furnished to the Commissioner.

G. Procedural questions. The presiding officer or any designated member of the assisting panel shall determine all procedural questions. The Commissioner and the presiding officer shall each have the authority to limit the number of witnesses to be called by each participant and to impose such time limitations as they shall deem reasonable.

H. Transcript. ~~A~~ If the proceedings of the hearing are recorded by a court reporter, a transcript of each the hearing shall be made. The Commissioner's office shall ~~The party requesting the hearing may~~ arrange for a court reporter to be present to record the proceedings. All expenses of the reporter, including the furnishing of two copies of the transcript to the Commissioner, shall be borne by the person or persons requesting the opportunity to be heard. In the event the Commissioner orders a hearing when no request is submitted, expenses shall be borne by the applicant.

I. The record. The record of these proceedings shall include the charter application file described in Section 309 of this title, all documentary evidence presented at the hearing and ~~the~~ any transcript.

SECTION 9. AMENDATORY 6 O.S. 2001, Section 309, as amended by Section 9, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2004, Section 309), is amended to read as follows:

Section 309. A. Contents. The charter application file shall consist of the application with supporting data and supplementary information, with the exception of personal financial records of individual applicants and other material deemed by the Commissioner to be confidential. In addition, the charter application file shall contain all data and information submitted by interested persons in opposition to such application.

B. Availability of charter application file. Except for personal financial records of individual applicants and other material deemed by the Commissioner to be confidential, the charter application file shall be available for inspection in the office of the Banking Department upon written request from any person. No documents in the charter application file may be removed from the office of the Banking Department. Photocopies may be made upon request. The charge for such copies shall be determined ~~by the Commissioner~~ pursuant to Section 208 of this title.

C. Findings and conclusions. The presiding officer of a hearing permitted under Section 308 of this title shall issue findings of fact and conclusions of law within thirty (30) days after the hearing or additional time as prescribed by the presiding officer based on the material contained in the record and shall mail a copy of the findings and conclusions to each participant. The presiding officer, at the discretion of the presiding officer, may give consideration to the following in arriving at the findings, conclusions and recommendation of the presiding officer:

1. The character, financial responsibility and business experience of the organizers and proposed directors;
2. The adequacy of the existing banking facilities in the proposed market;
3. The economic and competitive conditions in the proposed market;
4. The likelihood of successful operation of the proposed institution;
5. The adequacy of initial capital, proposed earnings and deposit prospects of the proposed institution; and
6. Negative impact on banks serving all or part of proposed market.

D. Objections; Board hearing. Written objections to the presiding officer's findings and conclusions, or procedural objections, if any, shall be submitted to the Commissioner by participants within fourteen (14) days after the issuance of the presiding officer's findings and conclusions. The Commissioner shall schedule a date for consideration of the presiding officer's findings of fact and conclusions of law and recommendations ~~by~~ to the Board and for presentation of oral arguments by participants in support of or in opposition to the written objections previously submitted.

The Commissioner shall promptly notify all participants of the date scheduled for hearing before the Board.

SECTION 10. AMENDATORY 6 O.S. 2001, Section 310, as amended by Section 10, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2004, Section 310), is amended to read as follows:

Section 310. A. Board hearing. The Board shall consider all applications for authority to organize a state bank or trust company. If the Commissioner has granted an earlier hearing on the application, the Board shall review the transcript of the proceedings, if any, including the findings of fact and conclusions of law of the presiding officer. The Board may hear oral argument in support of and in opposition to the written objections, if any, and shall adopt, reject or remand the findings, conclusions and recommendation of the presiding officer. The Board shall adopt the presiding officer's findings, conclusions and recommendation unless it finds the presiding officer's findings, conclusions and recommendation are not supported by the record. Remand may be for the sole purpose of the presiding officer taking additional evidence from the participants. Any such remand shall specifically identify the scope and nature of additional evidence sought by the Board. Proceedings on remand shall be conducted within the time limits set by the Board in the manner as prescribed by the presiding officer.

The Board may adopt, reject or modify any finding of fact not supported by the record. The Board may adopt or reject any conclusion of law. The Board may enter such additional findings of fact that it deems necessary or appropriate and which is supported by the record.

In the absence of a hearing granted before the Commissioner, the Board may adopt its own findings of fact and conclusions of law with respect to the approval or disapproval of the application. If the applicant or any interested party desires to obtain a transcript of the proceedings before the Board, such person shall notify the Commissioner in writing within ten (10) days of the Board's hearing and must arrange for a court reporter to be present at the hearing. All expenses of the reporter, including the furnishing of two copies of the transcript to the Commissioner, shall be borne by the person or persons arranging for the reporter. In the event the Board requests a reporter to be present, expenses shall be borne by the applicant.

B. Condition. Approval of an application for authority to organize a state bank shall be contingent upon the proposed bank making a bona fide application for Federal Deposit Insurance or for membership in the Federal Reserve System.

C. Approval of an application. When approving or disapproving an application for authority to organize a state bank or trust company, the Board may accept or reject any findings of fact or conclusions of law reached in an earlier hearing before the Commissioner, or may approve or disapprove the application based on its own findings of fact and conclusions of law. The Board must provide written findings of fact and conclusions of law only when required by the provisions of the Oklahoma Administrative Procedures Act.

D. Notice. Within ten (10) days after approval or disapproval of the application by the Board, the Commissioner shall provide notice to all interested persons.

SECTION 11. AMENDATORY 6 O.S. 2001, Section 405, is amended to read as follows:

Section 405. A. Increase or decrease of capital stock; procedure. Any bank or trust company authorized to conduct a banking business under the laws of the State of Oklahoma may at any time increase or reduce its capital stock, ~~but not below the minimum provided by subsection B of Section 303.1 of this title,~~ after such change ~~having~~ has been approved by the Commissioner and by a majority vote of the outstanding voting stock.

1. After the increase or decrease of capital stock has been authorized at a regular shareholders' meeting or a special shareholders' meeting called for that purpose, the president or secretary of the bank or trust company shall prepare a certificate in the form prescribed by the Commissioner containing a copy of the resolution, as passed by a majority vote of the outstanding voting stock, authorizing the increase or decrease of capital stock. Such certificate shall be verified by oath of the president or secretary of the corporation and forthwith transmitted to the Commissioner.

2. Upon receipt of such certificate, the Commissioner may, in the discretion of the Commissioner, authorize the increase or decrease of the capital stock of the corporation. The Commissioner, after such increase or decrease has been authorized and approved, shall thereupon issue a certificate showing the amount to which the capital stock has been increased or decreased by authority of the resolution, as certified by the Commissioner.

3. No bank or trust company shall issue any certificate of stock under any increase of capital until the whole amount of such increase has been fully paid either in cash or by transfer from undivided profits.

B. Reduction of capital stock; surrender of certificate. Whenever the capital stock of any bank or trust company is reduced, every shareholder, owner or holder of any stock certificate shall surrender the same for cancellation and shall be entitled to receive a new certificate for that portion of the stock remaining in force after the reduction has been made. Any stock certificate which is not surrendered for cancellation and reissue, under any decrease of capital stock, shall be null and void as to the amount represented by the decrease. No dividends shall be paid to any shareholder until the old certificate has been surrendered and canceled.

SECTION 12. AMENDATORY 6 O.S. 2001, Section 414, as amended by Section 2, Chapter 180, O.S.L. 2003 (6 O.S. Supp. 2004, 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. With prior approval of the Commissioner, a bank or trust company may purchase and hold fixtures, facilities and real estate, 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~~ Unless a bank has applied for approval by the Commissioner during the first two (2) years after the real estate is acquired, to retain such real estate for the purposes described in paragraph 6 of subsection A of this section, a

bank 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~~ must be disposed of or ~~carried as prescribed by the Commissioner,~~ if approved by the Commissioner, must be transferred to a subsidiary company of the bank.

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 13. AMENDATORY 6 O.S. 2001, Section 424, as amended by Section 3, Chapter 180, O.S.L. 2003 (6 O.S. Supp. 2004, 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~~ customer.

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 14. AMENDATORY 6 O.S. 2001, Section 1004, as amended by Section 16, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2004, Section 1004), is amended to read as follows:

Section 1004. A. Deposit requirement - As pledge for faithful performance.

(1) Before any bank or trust company, including national banking associations, shall transact any fiduciary business within this state it shall deposit with the Commissioner, as security and as a pledge for the faithful performance of its duties as a trust company, cash or interest-bearing securities, which securities shall have a ready market value in an amount regulated by the amount of cash and securities held in trust by the bank or trust company.

(2) Whenever such cash and securities held in trust amount to less than One Million Dollars (\$1,000,000.00), the deposit shall be Fifty Thousand Dollars (\$50,000.00). Whenever such cash and securities held in trust amount to One Million Dollars (\$1,000,000.00) but do not exceed Five Million Dollars (\$5,000,000.00), the deposit shall be Two Hundred Fifty Thousand Dollars (\$250,000.00). Whenever such cash and securities held in trust amount to Five Million Dollars (\$5,000,000.00) but do not

exceed Ten Million Dollars (\$10,000,000.00), the deposit shall be Four Hundred Thousand Dollars (\$400,000.00). Whenever such cash and securities held in trust exceed Ten Million Dollars (\$10,000,000.00), the deposit shall be Five Hundred Thousand Dollars (\$500,000.00); provided, no trust company not receiving deposits other than funds held by it in trust shall be required to increase the deposit to an amount in excess of its capital. The term "cash and securities held in trust" as employed herein shall not include lands held in trust as collateral security for monies lent or to be lent, nor to trust funds registered with the Securities and Exchange Commission under the Securities Act of 1933, as amended (48 Stat. 74, 15 U.S.C. Section 77 (1933)), and the Securities Exchange Act of 1934, as amended (48 stat. 881, 15 U.S.C. Section 78 (1934)).

B. Securities eligible for deposit. The securities mentioned in subsection A of this section (~~Section 1004~~) may be of the following classes and not otherwise:

(1) Interest-bearing bonds, notes or obligations of the United States, or those for which the faith of the United States is pledged for the payment of the principal and interest.

(2) Bonds or other obligations of the State of Oklahoma or any county of this state, or of any incorporated city, town or school or port district of this state having a population of not less than two thousand (2,000) inhabitants as shown by the last federal census, or bonds of any other state of the United States, or any county, incorporated city, town or school district having a population of not less than twenty-five thousand (25,000) inhabitants, as shown by the last federal census, provided such bonds were issued in compliance with the constitution and laws of such state, and there has been no default in payment of either principal or interest on any of the general obligations of such state, county, incorporated town, city or school or port district for a period of five (5) years next preceding the date of the deposit, and such bonds are a general obligation of the state, county, school or port district, city or town issuing the same.

(3) Bonds, other than foreign bonds, listed on the New York Stock Exchange, provided the total obligation of any one debtor shall not exceed twenty percent (20%) of the aggregate deposit.

(4) Notes or bonds secured by first lien upon improved real estate in the State of Oklahoma. Such loans may be subsequent to taxes not due and bonded indebtedness for public improvements not due, but any such obligation, plus taxes not due and bonded indebtedness for public improvements not due, shall not exceed fifty percent (50%) of the reasonable market value of such real estate, except as provided in Section 1008 of this Code. There shall be filed by the bank or trust company in support of such real estate obligation such appraisal, evidence of merchantable title and insurance as may be required by the Commissioner.

C. Purchase of bond or irrevocable letter of credit in lieu of deposit. As an alternative to the deposit and pledge of cash or securities pursuant to the provisions of this section, a bank or trust company may purchase a bond or irrevocable letter of credit, ~~payable to~~ for the benefit of the Commissioner and ~~to~~ any person suffering a loss by reason of the malfeasance of the bank or trust company (a "Claimant"). The amount of the bond or letter of credit

must be not less than twice the amount of the cash and securities which would otherwise be required to be pledged under paragraph (2) of subsection A of this section. The bond or letter of credit must be submitted to and approved by the Commissioner. The bond or letter of credit may be canceled only after thirty (30) days' prior written notice to the Commissioner and only after the bank or trust company has made a sufficient deposit of cash or securities under the terms of this section, or the company has been relieved of its fiduciary positions by transfer pursuant to the terms of Section 1109 of this title and has relinquished its trust powers pursuant to the provisions of Section 1017 of this title. Any bank or trust company that does not maintain a bond or letter of credit which complies with the terms of this subsection must make a deposit or pledge of securities pursuant to the terms of this section.

D. Primary liability for deposit. The deposit, ~~or~~ bond, or letter of credit required by this section shall be primarily liable for the malfeasance of a company as guardian, executor, administrator, assignee, receiver, trustee under inter vivos trust or trustee under will by an appointment of court, or depository of money in court, and is not liable for any debt or other obligation of the company until such malfeasance liability of the company has been discharged.

E. Right of action against deposit, ~~or~~ bond or letter of credit. Any person who suffers loss or damage because of the breach of any trust committed to any bank or trust company shall have a right of action to recover the amount of such loss or damage from the provisions of the bond, letter of credit, or out of the moneys or securities deposited with the Commissioner by the bank or trust company. However, the Commissioner shall not be required to release to a Claimant any amount deposited with the Commissioner or request payment of any amount under the terms of the bond or letter of credit except at the direction of an unappealable order of a court of competent jurisdiction issued in favor of the Claimant. If the amount for which the bank or trust company is liable exceeds the amount of the bond or letter of credit or deposit, all Claimants will receive a pro rata portion of the total bond or deposit based on the Claimant's percentage of the company's total liability.

F. Charge for handling securities. The Commissioner may make such charges and assessments for expenses incurred, including insurance, and services rendered in connection with deposits of securities as he deems just and reasonable.

G. Appraisal of real estate securing deposit. The Commissioner may appraise, or cause to be appraised, or may in lieu of his own appraisal accept the appraisal of qualified appraisers, every parcel of real estate securing any note or bond offered for deposit with the Commissioner. If the appraisement is made by the Commissioner he shall collect from the company offering the mortgages for deposit his actual expenses in making the appraisement. If the appraisement is made by an appraiser selected by the Commissioner he shall collect a reasonable fee from the company.

H. Certificates of title, title insurance, or title opinion on real estate securing deposit. The Commissioner may accept a certificate of title or guaranty of title or title insurance policy from a title insurance company, or the opinion of the attorney who examined the title to the property for the trust company offering a

mortgage and note for deposit, or he may require an opinion as to title from the Attorney General.

I. Fire insurance; deposit of documents with notes or bonds.

(1) Fire insurance shall be in effect upon all insurable property for the reasonable value thereof.

(2) All mortgages or deeds of trust and all insurance policies, abstracts of title (when required by the Commissioners), certificates of title, guaranty of title or title insurance policies and appraisements shall be deposited with the notes or bonds. When less than the whole of a bond issue is deposited, the Commissioner shall not require the deposit of the abstract of title, certificate of title, guaranty of title or title insurance policies and appraisements, but may require in lieu thereof a certificate from the trustee of the mortgage or bond issue that such documents have been deposited with the trustee.

J. Substitution of deposit securities; income of securities deposited.

(1) The Commissioner may require the immediate substitution of other securities when he has reason to believe that the market value of securities which have heretofore been deposited have depreciated below their face value. Substitution of securities with the Commissioner at the request of the depositing bank or trust company may be permitted when approved by the Commissioner.

(2) So long as the depositing bank or trust company continues solvent it shall be permitted to receive and retain all interest, income or dividends from all securities deposited with the Commissioner.

K. Return of deposit; liability of state.

(1) The State of Oklahoma is liable for the return of any funds or securities deposited in accordance with this section.

(2) The State of Oklahoma is responsible for the safe return of such securities deposited with the Commissioner under this Code.

SECTION 15. AMENDATORY 6 O.S. 2001, Section 1017, is amended to read as follows:

Section 1017. A. 1. Banks. Any bank desiring to surrender its right to exercise the powers granted pursuant to this article in order to relieve itself of the necessity of complying with the requirements of this article, or to have cancelled or returned to it any securities which it deposited with the State Banking Commissioner security pledged or purchased pursuant to Section 1004 of this title, may file with the Commissioner a certified copy of a resolution of its board of directors signifying such desire.

2. Upon receipt of such resolution, the Commissioner, upon satisfaction that such bank has been relieved in accordance with state law of all duties as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or other fiduciary, under court, private or other appointment previously accepted under authority of this article, may

issue to such bank a certificate certifying that such bank is no longer authorized to exercise the powers granted by this article.

3. Upon the issuance of such a certificate by the Commissioner, such banks:

- a. shall no longer be subject to the provisions of this article or the regulations of the Board made pursuant thereto,
- b. shall be entitled to cancel or have returned to it any securities which it deposited with the Commissioner security pledged or purchased pursuant to the provisions of Section 1004 of this title, and
- c. shall not exercise thereafter any of the powers granted by this article without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this Code.

B. Trust companies. Any trust company desiring to retire from business specified in this article shall furnish to the Commissioner satisfactory evidence of its release and discharge from all obligations and trusts provided for in this article. The Commissioner shall thereupon examine, or cause to be examined, such trust company, and, if the Commissioner is satisfied after such examination that such trust company has discharged all its obligations and trusts, the Commissioner shall revoke its certificate of authority and ~~deliver up all securities on deposit with him~~ authorize the cancellation of, or return, of any security pledged or purchased pursuant to the provisions of Section 1004 of this title.

SECTION 16. AMENDATORY 6 O.S. 2001, Section 1018, is amended to read as follows:

Section 1018. A. Successor trustee upon liquidation or receivership; appointment and qualification; petition by Commissioner. Whenever any bank or national banking association doing a trust business or trust company goes into voluntary or involuntary liquidation or receivership, successor trustee or trustees shall be appointed and shall qualify in the following manner:

(1) After the Commissioner has taken possession of any such bank or trust company, he shall file in the liquidation proceedings of the bank or trust company a petition setting forth in general terms that the bank or trust company is trustee under certain trusts and that it is desirable and necessary that a successor trustee or trustees be appointed under such trusts. It is not necessary for such petition to designate the parties to any such trust or the nature, purpose or extent of the trusts or the trust properties.

(2) Upon the filing of the petition, the court shall make and enter an order requiring all persons interested in any and all such trusts either to designate and provide and take all necessary steps to appoint successor trustee or trustees within a time to be fixed in the order, or to show cause why a successor trustee or trustees should not be appointed by the court. Such order may be general in its terms and need not designate the trusts involved or the nature,

purpose or extent thereof, or give the name of any of the beneficiaries or others interested therein.

(3) In all trusts where all persons interested, or the court having jurisdiction of court trusts, take the steps to provide for the appointment and qualification of a successor trustee or trustees within the time limited in such order, or such further time as the court may allow, the successor trustee or trustees shall, with relation to such trusts, succeed to all the rights, powers, privileges, and obligations of the bank or trust company in liquidation, except claims or liabilities arising out of the management of the trust prior to the date of transfer.

(4) In any trust where those interested therein fail to cause a successor trustee or trustees to be appointed prior to the time fixed in such order, the court shall, by order and decree, appoint a successor trustee or trustees, and such successor trustee or trustees shall, with relation to such trusts, succeed to all the rights, powers, privileges and obligations of the bank or trust company in liquidation, except claims or liabilities arising out of the management of the trust prior to the date of transfer.

(5) A copy of the order provided for in paragraph (2) of this subsection shall be published once a week for four (4) successive weeks in a newspaper of general circulation to be designated by the court and published in the county in which the liquidation proceedings of the bank or trust company are carried on. If there is no newspaper published in such county, publication shall be made in a newspaper of general circulation in the State of Oklahoma designated by the court. Proof of publication shall be made in the same manner as proof of publication of summons is made.

(6) The filing of such petition and the making and entering of such order and the giving of notice of such order as required by this subsection gives the court full jurisdiction of the trusts and all parties interested therein. The court having jurisdiction in such matter shall require the Commissioner to mail, by registered mail postage prepaid, a copy of such order to each living trustor of all private trusts in which such bank or trust company is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. Such notice shall be mailed to the last-known address of each such trustor or participating beneficiary as shown by or as may be ascertained by reasonably diligent efforts from the records of the bank or trust company. Proof of mailing shall be in such form as the court shall require.

B. Successor trustee; petition by liquidating agent or receiver; National banking associations. Whenever a national banking association doing a trust business goes into voluntary or involuntary liquidation, the liquidating agent or the receiver thereof may file a petition in the district court of the county in which the national banking association has or had its principal office and place of business, setting forth the same matters as are required to be set forth in the petition filed by the Commissioner under subsection A of this section. Thereafter, successor trustee or trustees for the trusts of such national banking association shall be appointed in the same manner and the same procedure followed and the same jurisdiction acquired as set forth in subsection A of this section.

C. Successor trustee; petition by bank or trust company. When any bank or trust company doing a trust business going into voluntary liquidation, such bank or trust company may file a petition in the district court of the county in which it has its principal office or place of business, setting forth the same matters as are required to be set forth in the petition filed by the Commissioner under subsection A of this section. Thereafter successor trustee or trustees for the trusts of such bank or trust company shall be appointed in the same manner and the same procedure followed and the same jurisdiction obtained as set forth in said subsection A of this section. Provided, however, with respect to those trust accounts for which those interested therein fail to cause a successor trustee or trustees to be appointed, the liquidating bank or trust company shall be responsible for mailing, by registered mail postage prepaid, a copy of the court's order to each living trustor of all private trusts in which such bank or trust company is trustee or to the then directly participating beneficiaries of all private trusts in which there is no living trustor. Such notice shall be mailed to the last-known address of each such trustor or participating beneficiary as shown by or as may be ascertained by reasonably diligent efforts from the records of the bank or trust company. Proof of mailing shall be in such form as the court shall require.

D. Transfer of trust property to successor trustee. Upon the appointment of any successor trustee or trustees, in the manner provided in this section, the Commissioner, the liquidating agent, the receiver or the bank or trust company in voluntary liquidation, as the case may be, may execute such deeds, conveyances, transfers and assignments as are necessary to transfer to and vest in the successor trustee or trustees all right, title, interest, power and authority in, over and to the trust property theretofore vested in the bank or trust company or national banking association so in liquidation.

E. Discontinuance of trust business; determination of claims against deposit of securities. (1) Whenever a bank, trust company or national banking association doing a trust business discontinues such trust business, all claims of whatsoever kind and nature against the pledged or purchased security ~~deposit~~ of such trust company, bank or national banking association required by law to be made with the Commissioner shall be determined, established and adjudicated in the manner provided in this section. If not so determined, established and adjudicated, such claims shall forever be barred and foreclosed.

(2) The method of determining, establishing and adjudicating such claims shall be as follows: The Commissioner shall file in the district court for the county in which is located the principal office and the place of business in the State of Oklahoma of such trust company, bank or national banking association a verified petition setting forth:

- (a) that such trust company, bank or national banking association desires to retire from the trust business, dissolve or transfer its trust business, or that it is in process of voluntary or involuntary liquidation;

- (b) that it is necessary that claims, if any, against the ~~deposit~~ pledged or purchased security made by such trust company, bank or national banking association with the Commissioner be determined.

F. Order to bring suit; publication of order; jurisdiction over securities; notice to trustor; appearance of minors and incompetents unnecessary. (1) Upon the filing of the petition mentioned in subsection E of this section, the court shall make an order requiring all persons, ~~copartnerships~~ partnerships, associations or corporations having claims against the ~~securities~~ pledged or purchased security to commence action or suit thereon in such district court within six (6) months from the date of the order, or forever be barred and foreclosed of any claim on such ~~deposit~~ security. It is not necessary that either the petition or the order give the names of any beneficiary or the nature of the trusts protected by the ~~deposit~~ security.

(2) A copy of the order shall be published in a newspaper designated by the court, having a general circulation in the county of the principal office and place of business in the State of Oklahoma of such trust company, bank or national banking association, at least once a week for as many consecutive weeks as the court shall determine, not less than four (4) weeks nor more than twelve (12) weeks. If no newspaper is published in such county, the copy of the order shall be published in such newspaper in this state as the court designates. Upon completion of publication, proof thereof shall be made in the same manner as proof of publication of summons is made and such proof shall be filed with the clerk of such court.

(3) The filing of the petition, the making and entering of the order, and the giving of notice of such petition as required by this subsection, gives the court full jurisdiction of ~~securities so deposited~~ the security pledged or purchased under Section 1004 of this title and of all parties having an interest in or claim upon such ~~securities~~ security. The court so having jurisdiction in such matter shall require the Commissioner to mail, by registered mail postage prepaid, a copy of such order to each living trustor of all private trusts in which the bank or trust company is trustee and which have not been closed or to the then directly participating beneficiaries of all such private trusts in which there is no living trustor. Such notice shall be mailed to the last-known address of each such trustor or participating beneficiary as shown by or as may be ascertained by reasonably diligent efforts from the records of the bank or trust company. Proof of mailing shall be in such form as the court requires.

G. Termination of right to do trust business. The filing by the Commissioner of the proceedings provided for in subsection E of this section shall operate to terminate the right of the bank or trust company or national bank affected thereby to do a trust business, except such business as may be necessary to wind up then existing trusts.

H. Actions or suits on claims; limitation of actions; service of summons; preference on calendars. (1) All persons, ~~copartnerships~~ partnerships, associations or corporations, including minors, incompetents and all others under any legal disability, having any claim against the ~~deposit~~ pledged or purchased security

mentioned in subsection E of this section, shall file action or suit within six (6) months from the date of the court order, and in default thereof shall be forever barred and foreclosed of any and all claim and interest in, to or against the ~~deposit~~ security.

(2) The district court making the order shall have exclusive jurisdiction of all actions or suits brought to determine claims to the ~~deposit~~ pledged or purchased security.

(3) In all actions or suits filed pursuant to this action, the Commissioner shall be a necessary party defendant.

(4) No action or suit shall be deemed to have been commenced within the time required by the order unless, in the case of defendants within the state, summons is actually served within sixty (60) days from the time limited in the order.

(5) Actions or suits filed pursuant to this section shall have preference upon the calendar of both the trial court and the Supreme Court, and shall be tried by such courts without unnecessary delay.

I. Release or payment of ~~deposit~~ security pending suit; distribution of ~~deposits~~ security upon determination of suit. (1) If any actions or suits on claims against the ~~deposit~~ pledged or purchased security mentioned in subsection E of this section are commenced within the time limited by the court order, the Commissioner shall not release or cancel the ~~deposit~~ security, or any part thereof, nor shall the court order the release or cancellation thereof nor the payment of any part thereof until such time as all such actions or suits are determined by final judgment or decree.

(2) When such actions or suits are finally determined, so much of the ~~deposit~~ security as is necessary shall be paid over to such of the claimants as have established their rights thereto in the sums allowed by the court, or if not sufficient the ~~deposit~~ security shall be distributed pro rata among such claimants as have established, by final judgment or decree, their claims thereto.

(3) The court, in the proceeding to be commenced by the Commissioner, shall decree that the balance, if any, or the entire ~~deposit~~ security, in case no claims are established in the manner provided, be cancelled or paid over and delivered to the trust company, bank or national banking association ~~making~~ pledging the ~~deposit~~ security or its successors or assigns, except that, in the case of any such trust company, bank or national banking association which is in process of voluntary or involuntary liquidation, the ~~deposit~~ security or balance thereof, if any, shall be paid over to the official lawfully in charge of the liquidation.

J. Commissioner's charges and assessments as a prior lien on ~~deposit~~ security. All unpaid charges and assessments owing to the Commissioner for expenses and services rendered in connection with the ~~deposit~~ pledged or purchased security mentioned in subsection E of this section, and all expenditures incurred or made by the Commissioner, including services rendered by ~~him~~ the Commissioner, ~~attorney's~~ attorney fees and necessary court expenses in connection with the determination of claims against the ~~deposit~~ security, shall be a first and prior lien on the ~~deposit~~ security, and be first paid before the ~~deposit~~ security, or any part thereof, is released or

paid over to any claimant or trust company, bank or national banking association.

K. Sale and disposition of ~~securities~~ security to pay expenses, costs, ~~attorney's~~ attorney fees and claims. The court having jurisdiction of the proceedings instituted by the Commissioner may, upon such terms as the court shall fix, authorize and order the Commissioner to sell, dispose of and reduce to cash such portion of the ~~securities deposited~~ security pledged or purchased by such bank or trust company or national banking association as may be necessary to pay for the services rendered and expenses incurred by the Commissioner in connection with such ~~deposit~~ security and the proceedings contemplated by subsections E to L, inclusive, of this section, including ~~attorney's~~ attorney fees and court costs, and to pay claims established against such ~~deposit~~ security.

L. Application of subsections E to K, inclusive, of this section. Subsections E to K, inclusive, of this section apply to ~~security deposits of~~ pledges of security by banks, trust companies and national banking associations which retire from the trust business, transfer such business or go into voluntary or involuntary liquidation or receivership, or other method of liquidation. Provided, however, the provisions of subsections E through K of this section shall not apply to any bank or trust company desiring to relinquish its trust powers and receive a return or cancellation of its pledged security and which has not maintained any active trust accounts or acted in a fiduciary capacity within the most recent six (6) months prior to its filing with the Commissioner pursuant to Section 1017 of this title a certified copy of a resolution of its board of directors signifying such desire to relinquish its trust powers and evidence of its release and discharge from all obligations and trusts provided for in this article.

SECTION 17. AMENDATORY 6 O.S. 2001, Section 1405, is amended to read as follows:

Section 1405. A. It shall be unlawful for an affiliate of a bank or trust company or for an officer, director or employee of a bank or trust company or affiliate of a bank or trust company:

1. To solicit, accept or agree to accept, directly or indirectly, from any person other than the institution any gratuity, compensation or other personal benefit for any action taken by the institution or for endeavoring to procure any such action; or

2. To have any interest, directly or indirectly, in the proceeds of a loan or of a purchase or sale made by the bank, unless such loan is otherwise permissible, and the purchase or sale is expressly authorized by this Code or by rule of the Board and, unless otherwise directed in writing by the Commissioner, is specifically approved by vote of a majority of the board of directors of the bank or trust company. Provided, no interested director or trustee shall take part in such vote.

B. In this section the term "affiliate" shall include:

1. Any person who holds a majority of the stock of a bank or has been determined by the Board to hold a controlling interest therein, any other corporation in which such person owns a majority

of the stock and any partnership in which the person has an interest;

2. Any corporation in which the institution or an officer, director or employee thereof holds a majority of the stock and any partnership in which such person has an interest; or

3. Any corporation of which a majority of the directors are officers, directors or employees of the institution or of which officers, directors, trustees or employees constitute a majority of the directors of the institution.

SECTION 18. AMENDATORY 6 O.S. 2001, Section 1740, is amended to read as follows:

Section 1740. A. A private trust company engaging in the trust business in this state shall comply with each and every provision of this act and Sections 101 through 1417 of the Oklahoma Banking Code applicable to a trust company unless expressly exempted therefrom in writing by the Commissioner pursuant to this section, by rule adopted by the Department or under a predecessor statute.

B. A private trust company or proposed private trust company may request in writing that it be exempted from specified provisions of ~~subsection B of Section 19 of this act~~ and Sections 101 through 1417 of the Oklahoma Banking Code. The Commissioner may grant the exemption in whole or in part if the Commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

1. "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether for a fee, commission or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust or other company that is not one hundred percent (100%) owned by one or more family members; and

2. "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals.

C. All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

D. At the expense of the private trust company, the Commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the Commissioner shall approve the application for exemption or set the application for hearing not later than the sixty-first day after the date the Commissioner considers the application complete and accepted for filing. The Commissioner may require the submission of additional information as considered necessary to an informed decision.

E. Any exemption granted under this section may be made subject to conditions or limitations imposed by the Commissioner consistent with this act.

F. The Department may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of this act and Sections 101 through 1417 of the Oklahoma Banking Code that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining or revoking exempt status.

SECTION 19. AMENDATORY 6 O.S. 2001, Section 1741, is amended to read as follows:

Section 1741. A. 1. A private trust company requesting an exemption from the provisions of this act, pursuant to Section ~~36~~ 1740 of this ~~act~~ title, shall file an application with the Commissioner containing the following:

- a. a nonrefundable application fee as set by the Department. If the exemption request is made at the same time as the charter application is filed, no additional fee shall be required in connection with the exemption request. If an exemption request is made after the private trust company charter has been issued, the fee for an exemption request shall be equal to that imposed by the Department in connection with branch bank applications,
- b. a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application,
- c. a statement under oath of the reason for requesting the exemption,
- d. a statement under oath that the private trust company is not currently transacting business with the public and that the company will not conduct business with the public without the prior written permission of the Commissioner,
- e. the current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U.S. Postal Service post office box or a private mail box, postal box or mail drop, and
- f. listing of the specific provisions of the act and Sections 101 through 1417 of the Oklahoma Banking Code for which the request for exemption is made.

2. The Commissioner shall not approve a private trust company exemption unless the application is completed as required in paragraph 1 of this subsection.

B. To maintain status as an exempt private trust company under this act, the private trust company:

1. Shall not transact business with the public;

2. Shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the Commissioner and be accompanied by a fee ~~determined by the Department~~ equal to that imposed by the Department for registration statements filed under Section 104 of this title. The annual certification shall be filed on or before June 30 of each year. No annual certification shall be valid unless it bears an acknowledgment stamped by the Department. The Department shall have thirty (30) days from the date of receipt to return a copy of the acknowledged annual certification to the private trust company. The burden shall be on the exempt private trust company to notify the Department of any failure to return an acknowledged copy of any annual certification within the thirty-day period. The Commissioner may examine or investigate the private trust company periodically as necessary to verify the certification;

3. Shall comply with the principal office provisions of Section ~~12~~ 1712 of this ~~act~~ title and with the address and telephone requirements of subparagraph e of paragraph 1 of subsection A of this section; and

4. Shall pay the corporate franchise tax, as certified by the Oklahoma Tax Commission.

C. Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this act, and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status shall be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

D. The Commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

1. The exempt private trust company makes a false statement under oath on any document required to be filed by the act or by any rule promulgated by the Department;

2. The exempt private trust company fails to submit to an examination ~~as required by Section 12 of this act~~ of its books and records by the Commissioner;

3. The exempt private trust company withholds requested information from the Commissioner; or

4. The exempt private trust company violates any provision of this section applicable to exempt private trust companies.

E. If the Commissioner determines from examination or other credible evidence that an exempt private trust company has violated any of the requirements of this section, the Commissioner may, by personal delivery or registered or certified mail, return receipt

requested, notify the exempt private trust company in writing that the private trust company's exempt status has been revoked. The notification shall state grounds for the revocation with reasonable certainty. The notice shall state its effective date, which may not be before the fifth day after the date the notification is mailed or delivered. The revocation takes effect for the private trust company if the private trust company does not request a hearing in writing before the effective date. After taking effect, the revocation is final and nonappealable as to that private trust company, and the private trust company shall be subject to all of the requirements and provisions of the act and the Oklahoma Banking Code applicable to nonexempt state trust companies.

F. A private trust company shall have five (5) calendar days after the revocation is effective to comply with the provisions of this act from which it was formerly exempt. If, however, the Commissioner determines, at the time of revocation, that the private trust company has been engaging in or attempting to engage in acts intended or designed to deceive or defraud the public, the Commissioner may shorten or eliminate, in the Commissioner's sole discretion, the five-calendar-day compliance period.

G. If the private trust company does not comply with all of the provisions of this act, including such capitalization requirements as have been determined by the Commissioner as necessary to assure the safety and soundness of the private trust company, within the prescribed time period, the Commissioner may:

1. Institute any action or remedy prescribed by this act and the Oklahoma Banking Code, or any applicable rule or regulation; or
2. Refer the private trust company to the Attorney General for institution of a quo warranto proceeding to revoke the charter.

~~H. A private trust company that currently has a valid exemption under a predecessor statute shall be considered exempt under this act.~~

SECTION 20. AMENDATORY 6 O.S. 2001, Section 2108, is amended to read as follows:

Section 2108. Each approved applicant shall furnish a corporate surety bond in the principal sum of One Hundred Thousand Dollars (\$100,000.00) for one (1) to fifteen (15) locations within this state at which checks of the licensee are issued or sold, Two Hundred Fifty Thousand Dollars (\$250,000.00) for sixteen (16) to five hundred (500) locations within this state at which checks of the licensee are issued or sold, One Million Dollars (\$1,000,000.00) for five hundred one (501) to eight hundred (800) locations within this state at which checks of the licensee are issued or sold, or One Million Five Hundred Thousand Dollars (\$1,500,000.00) for over eight hundred (800) locations, within this state at which checks of the licensee are issued or sold, but in no event shall the bond be required to be in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00). A licensee may furnish a bond in the maximum amount required by this section, or deposit securities equal to such amount as provided in subsection (b) of Section 2109 of this title, even though the locations in this state at which checks of the licensee are issued or sold do not total a number requiring a bond or a deposit of securities in such maximum amount. Each

application for a license or for the renewal of a license shall be accompanied by a list of the locations, including agencies, at which the applicant engages in the business of selling checks in this state. The bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this act and will honestly and faithfully apply all funds received and perform all obligations and undertakings for exchange issued and sold under this act and will pay to the state and to any person entitled thereto all money that becomes due and owing to the state or to such person under the provisions of this act because of any checks or exchange issued or sold in this state by such licensee. The bond shall remain in force and effect until canceled by the surety, which cancellation may be had only upon thirty (30) days' written notice to the Commissioner. Such cancellation shall not affect any liability incurred or accrued prior to the termination of such thirty-day period.

In lieu of the corporate surety bond required herein, the Commissioner may in his discretion permit an approved applicant to furnish an irrevocable letter of credit from a bank ~~with a capital to assets ratio in excess of six percent (6%) according to the bank's most recent Report of Condition~~ approved in writing by the Commissioner in the same amount as would be required for a corporate surety bond. A new irrevocable letter of credit from a qualifying bank would be required within fifteen (15) days if the bank originally issuing the irrevocable letter of credit ~~falls below the required ratio~~ refuses to continue the letter of credit or is otherwise notified by the Commissioner that the original bank is no longer qualified to issue a letter of credit for the purposes described in this section.

SECTION 21. AMENDATORY 6 O.S. 2001, Section 2109, is amended to read as follows:

Section 2109. (a) If the Commissioner shall find at any time that any bond required under this act is insecure or exhausted, an additional bond to be approved by the Commissioner shall be filed by the licensee within ten (10) days after written demand therefor by the Commissioner.

(b) In lieu of any bond required under this act, the licensee may deposit with the Commissioner securities with a ~~par~~ ready market value equal to the amount of any such bond. Such securities shall consist of (1) general obligations of or fully guaranteed by the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or (2) direct general obligations of the State of Oklahoma, or of any county, city, town, school district, or other political subdivision or municipal corporation of the State of Oklahoma. Such securities shall be held by the Commissioner to secure the same obligation as would any bond, required by this act. The securities so deposited may be exchanged from time to time for other securities receivable as aforesaid. All said securities shall be subject to sale, and transfer and to the disposal of the proceeds by said Commissioner only on the order of a court of competent jurisdiction. So long as the licensee so depositing shall continue solvent, such licensee shall be permitted to receive the interest or dividends on said deposit. The Commissioner may provide for custody of such securities by any qualified trust company or bank located in the State of Oklahoma or by any Federal Reserve Bank. The compensation,

if any, of the custodian for acting as such under this section shall be paid by the depositing licensee.

SECTION 22. AMENDATORY 6 O.S. 2001, Section 2113, is amended to read as follows:

Section 2113. A. The State Banking Commissioner may examine the books and records of each licensee 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 an examination or audit review a fee of ~~Fifty Dollars (\$50.00)~~ Seventy-five Dollars (\$75.00) per hour for each ~~qualified~~ representative of the Commissioner required to conduct the examination or audit review plus travel expenses as provided by subsection B of Section 201.1 of this title for each of the examining personnel. ~~However, whenever it shall be necessary for the Commissioner to travel out of this state to make an 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.

If the Commissioner accepts an audit in lieu of the examination of the Commissioner, the Commissioner may review such audit and may charge to the licensee fees for such review at the rate prescribed in subsection B of this section.

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

E. All license, examination, audit review, and investigation fees herein provided for shall be deposited in the Oklahoma State Banking Department revolving fund pursuant to Section 211.1 of this title.

SECTION 23. AMENDATORY 8 O.S. 2001, Section 166, is amended to read as follows:

Section 166. A. The owner of a cemetery maintaining a Perpetual Care Trust Fund shall be required to pay to the State Banking Commissioner an annual fee of Two Hundred Dollars (\$200.00), and file a report of each cemetery by March 15 of each year with the State Banking Commissioner, showing, for the preceding calendar year:

1. The gross amount received from sales of grave spaces, lots, mausoleum crypts and niches;

2. The total purchase price of grave spaces, lots, mausoleum crypts and niches on contracts which received final payment and required deposits to the Perpetual Care Fund during the calendar year;

3. The operating expenses incurred during the calendar year which are eligible to be paid from income of the Perpetual Care Fund;

4. The total amount of the principal of the Perpetual Care Fund as of the beginning of the preceding calendar year; and

5. The amount segregated and deposited in the Perpetual Care Fund as provided by this act which shall be certified by the trustee of the Perpetual Care Fund as to correctness thereof, and the trustee shall provide:

- a. the total amount of the principal of the Perpetual Care Fund as of the end of the calendar year,
- b. the securities and other assets in which such perpetual care funds are invested,
- c. the cash on hand,
- d. a verification in writing of all assets in which monies of the Perpetual Care Fund have been invested; provided, such verification shall be obtained from the holder or holders of such assets,
- e. the income derived from the Perpetual Care Fund investments during the calendar year, and
- f. the gross expenditures or transfers from income of the Perpetual Care Fund during the calendar year.

The annual fee collected pursuant to this subsection shall be deposited in the ~~Oklahoma State Banking Department revolving fund created pursuant to Section 211.1 of Title 6 of the Oklahoma Statutes~~ Cemetery Merchandise Trust Act Revolving Fund created pursuant to Section 316 of this title.

B. The Commissioner shall have authority, at any time, to inspect the books and records of any such cemetery, and to make an examination thereof for the purpose of determining if proper sums have been deposited with the trustee in the Perpetual Care Fund, and if the Fund is being properly administered by the trustee in accordance with the provisions of the Perpetual Care Fund Act and rules of the Commissioner. Each cemetery owner and trustee is

responsible for maintaining satisfactory books and records which adequately justify all information contained in the annual report required by this section. The Commissioner shall charge and collect a fee for such examination, which fee shall be deposited in the Cemetery Merchandise Trust Act Revolving Fund.

SECTION 24. REPEALER 6 O.S. 2001, Section 211.2, as amended by Section 6, Chapter 356, O.S.L. 2003 (6 O.S. Supp. 2004, Section 211.2), is hereby repealed.

SECTION 25. This act shall become effective November 1, 2005.

Passed the House of Representatives the 23rd day of February, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the 11th day of April, 2005.

Presiding Officer of the Senate