

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 5024

By: Winchester

4  
5  
6 AS INTRODUCED

7 An Act relating to banks and trust companies;  
8 amending 6 O.S. 2001, Section 102, as amended by  
9 Section 1, Chapter 67, O.S.L. 2002 (6 O.S. Supp.  
10 2007, Section 102), which relates to definitions;  
11 modifying reference; and providing an effective date.

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

13 SECTION 1. AMENDATORY 6 O.S. 2001, Section 102, as  
14 amended by Section 1, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2007,  
15 Section 102), is amended to read as follows:

16 Section 102. As used in ~~the Banking~~ this Code unless the  
17 context otherwise requires:

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

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

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

11 4. "Banking company" means any bank;

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

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

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

20 8. "Capital" shall include the paid-in common capital stock  
21 account, preferred stock account, surplus account, undivided profits  
22 account, capital reserves (other than contingency reserves),  
23 allowance for possible loan losses and mandatory convertible  
24 instruments that are convertible into common stock. "Capital" shall

1 also include all other approved subordinated notes and debentures,  
2 having an original weighted average maturity of at least seven (7)  
3 years, to the extent their maturity date exceeds five (5) years. As  
4 such notes and debentures approach maturity of less than five (5)  
5 years, they shall be considered "capital" in proportion to their  
6 years to maturity as it bears to five (5) years;

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

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

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

18 12. "Compliance review committee" means:

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

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

3 14. "Confusingly similar name" means:

4 a. as applied to the name of any bank, a name which is  
5 identical to that of any other bank located within  
6 this state, or a name which:

7 (1) contains one or more of the following words with  
8 or without the words "State," "National," or  
9 "Trust": American, Central, Citizens, City,  
10 Commerce, Commercial, Community, Exchange,  
11 Farmers & Merchants, First, Guaranty, Oklahoma,  
12 Peoples, Security or United,

13 (2) does not contain a geographical name (other than  
14 "Oklahoma") descriptive of the immediate location  
15 of the bank (street, town, city, county or other  
16 local geographical name),

17 (3) does not contain other unique or clearly  
18 distinguished words or marks, and

19 (4) is not a federally registered trade name,  
20 trademark or service mark owned by or licensed to  
21 the particular bank,

22 b. as applied to the name of any person not a bank, a  
23 name which is confusingly similar in spelling or  
24 wording or sound to the name of any bank located

1 anywhere within this state, if such name would tend to  
2 suggest falsely to the public that the person is a  
3 bank or is affiliated with the bank, directly or  
4 indirectly. However, nothing contained in this  
5 subsection shall prohibit the use of a similar name by  
6 a corporation which is in a relationship to the bank  
7 of parent, subsidiary, brother-sister corporation or  
8 other commonly controlled company, or

9 c. notwithstanding anything to the contrary in  
10 subparagraph a or b of this paragraph, the name or  
11 shortened name of a bank shall not be considered  
12 confusingly similar when used in conjunction with a  
13 federally registered trademark or service mark owned  
14 by or licensed to the particular bank. Proof of  
15 ownership or license of a federally registered mark  
16 must be provided to the Banking Department.

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

19 15. "Consumer banking electronic facility" means any electronic  
20 device owned, operated, leased by or on the behalf of a bank,  
21 savings association, or credit union other than a telephone or modem  
22 operated by a customer of a depository institution, to which a  
23 person may initiate an electronic fund transfer. The term includes  
24 without limitations, a point-of-sale terminal, automatic teller

1 machines, automated loan machines, video banking centers, or any  
2 other similar electronic devices;

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

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

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

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

11 20. "Department" means the Oklahoma State Banking Department  
12 created by this Code;

13 21. "Deposits" means all demand, time and savings deposits of  
14 individuals, partnerships, corporations, the United States and  
15 states and political subdivisions of the United States, deposits of  
16 banks, foreign governments, institutions, deposits held by foreign  
17 banking offices or corporations organized pursuant to 12 U.S.C.,  
18 Sections 601 through 604a, or Sections 611 through 631, as amended.  
19 Determinations of deposits shall be made by the Commissioner by  
20 reference to regulatory reports of condition or similar reports  
21 filed by banks or savings associations with state or federal  
22 regulatory agencies;

23 22. "Emergency" means any condition or occurrence which may  
24 interfere physically with the conduct of normal business operations

1 at one or more or all of the offices of a bank or an out-of-state  
2 bank, or which poses an imminent or existing threat to the safety or  
3 security of persons or property, or both. Without limiting the  
4 generality of the foregoing, an emergency may arise as a result of  
5 any one or more of the following: fires; floods; earthquakes;  
6 hurricanes; wind, rain or snow storms; labor disputes and strikes;  
7 power failures; transportation failures; interruptions of  
8 communication facilities; shortages of fuel, housing, food,  
9 transportation or labor; robberies or attempted robberies; actual or  
10 threatened enemy attack; epidemics or other catastrophes; riots,  
11 civil commotions and other acts of lawlessness or violence, actual  
12 or threatened;

13 23. "Executive officer", when referring to a bank, out-of-state  
14 bank, or trust company, means any person designated as such in the  
15 bylaws and includes, whether or not so designated, the chairman of  
16 the board of directors, chairman of the executive committee, the  
17 president, any vice-president, the trust officer, the treasurer, the  
18 cashier, the comptroller and the secretary, or any person who  
19 performs the duties appropriate to those offices;

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

22 25. "Federal Reserve Bank" means the Federal Reserve Banks  
23 created and organized under authority of the Federal Reserve Act;

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1       26. "Federal Reserve Board" means the Board of Governors of the  
2 Federal Reserve System created and described in the Federal Reserve  
3 Act, as amended;

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

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

21       29. "Good faith" means honesty in fact in the transaction and  
22 some reasonable ground for belief that the transaction is rightful  
23 or authorized;

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

6       31. "Insured depository institution" means any bank or savings  
7 association the deposits of which are insured by the Federal Deposit  
8 Insurance Corporation;

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

14       33. "Investment securities" means marketable obligations in the  
15 form of bonds, notes or debentures which are commonly regarded as  
16 investment securities. It does not include investments which are  
17 predominantly speculative in nature;

18       34. "Item" means any instrument for the payment of money even  
19 though not negotiable, but does not include money;

20       35. "Legal newspaper" means a newspaper qualified to publish  
21 legal notices under the provisions of Section 106 of Title 25 of the  
22 Oklahoma Statutes;

23       36. "Loan review committee" means a person or group of persons  
24 who, on behalf of an insured depository institution, reviews loans

1 held by such institution for the purpose of assessing the credit  
2 quality of the loans, compliance with the loan policies of such  
3 institution, and compliance with the applicable state and federal  
4 laws, regulations and rules;

5 37. "Local media" means:

6 a. any newspaper, radio station or television station  
7 with its main office located in the same city or town  
8 in which a particular main office of a bank is  
9 located, and

10 b. other means or media of advertising, including without  
11 limitation any outdoor signage on the premises of the  
12 bank, billboards, bulk mailings and other  
13 solicitations to persons who are not customers of the  
14 bank, but only to the extent that any such advertising  
15 is strictly limited in geographical location or  
16 distribution to the same city or town, including the  
17 immediate surrounding unincorporated rural area, where  
18 the particular main office of the bank is located;

19 38. "Main bank" means the office location which has been  
20 designated by the State Banking Commissioner or Comptroller of the  
21 Currency as the main office of a bank;

22 39. "Main office" means either the main bank or the main office  
23 location of a savings association;

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1 40. "Managing officer" means the chief executive officer of the  
2 bank;

3 41. "Member bank" means any national bank, state bank or  
4 banking and trust company which becomes a member of the Federal  
5 Reserve System;

6 42. "Merger" includes consolidation;

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

11 44. "Mobile" means the ability to be moved, picked up, rolled,  
12 pulled or driven;

13 45. "Multibank holding company" means an Oklahoma corporation  
14 which directly or indirectly owns or controls two or more banks, two  
15 or more bank holding companies, or one or more of each as defined in  
16 this section;

17 46. "National Bank Examiner" or "Federal Bank Examiner" means  
18 any person employed as a bank examiner by the Comptroller of the  
19 Currency, the Federal Deposit Insurance Corporation and the Federal  
20 Reserve Board or Bank;

21 47. "Office" means any place at which a bank or an out-of-state  
22 bank transacts its business or conducts operations related to its  
23 business;

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

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

13       50. "Out-of-state bank" means a national bank or a state or  
14 federal savings association which has its main office located in a  
15 state other than Oklahoma, or a bank chartered by a state other than  
16 Oklahoma;

17       51. "Out-of-state bank holding company" means a bank holding  
18 company which is not incorporated in this state and which directly  
19 or indirectly owns or controls one or more banks or out-of-state  
20 banks as defined in this section;

21       52. "Person" means an individual, group of individuals, board,  
22 committee, partnership, firm, association, corporation or other  
23 entity;

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1       53. "Political subdivision" includes a county, city, town or  
2 other municipal corporation, a public authority, and generally any  
3 publicly owned entity which is an instrumentality of the state or a  
4 municipal corporation;

5       54. "Principal place of business of a bank or a bank holding  
6 company" means the state in which the total deposits of the bank or  
7 the bank subsidiaries of the bank holding company are the largest;

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

15       56. "Resulting bank" means the combined banks and trust  
16 companies carrying on business upon completion of a merger;

17       57. "Retailer" means a person, corporation or partnership,  
18 primarily engaged in the sale of goods at retail to the general  
19 public;

20       58. "Savings association" means any savings and loan  
21 association or savings bank chartered under the laws of this state  
22 or the laws of the United States authorized to engage in the savings  
23 and loan business with its main office located in this state;

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

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

8 61. "Trust company" means:

- 9 a. any person doing a trust company business as set forth  
10 in this Code except an incorporated or unincorporated  
11 organization which is organized under Section  
12 501(c)(3) of the Internal Revenue Code as being  
13 organized and operated exclusively for educational,  
14 religious, charitable, or other eleemosynary purposes  
15 when exercising powers pursuant to the Oklahoma  
16 Charitable Fiduciary Act and the Oklahoma General  
17 Corporation Act, and  
18 b. the trust departments of banks authorized to engage in  
19 the trust company business.

20 SECTION 2. This act shall become effective November 1, 2008.

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22 51-2-12002 MAH 11/28/07

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