

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 1618

By: Sullivan

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to banks and trust companies;  
9 amending 6 O.S. 2001, Section 201, as last amended by  
10 Section 1, Chapter 275, O.S.L. 2008 (6 O.S. Supp.  
11 2008, Section 201), which relates to Banking  
12 Department organization and duties; providing for a  
13 main office location; amending 6 O.S. 2001, Section  
14 422, which relates to electronic consumer banking  
15 facilities; requiring that certain persons file a  
16 registration statement and pay certain fees;  
17 eliminating requirement that certain entities provide  
18 nondiscriminatory access to certain facilities;  
19 eliminating authority for certain reciprocal  
20 agreements; amending 6 O.S. 2001, Section 709, which  
21 relates to shareholder rights to receive certain  
22 dividends; limiting right to receive dividends to  
23 certain circumstances; specifying dividends to be  
24 paid in the event of a bank or trust company  
liquidation; amending 8 O.S. 2001, Section 168, which  
relates to Perpetual Care Fund Act exceptions;  
removing certain entities from exception; amending 8  
O.S. 2001, Section 302, which relates to Cemetery  
Merchandise Trust Act definitions; modifying  
definitions; amending 8 O.S. 2001, Section 303, which  
relates to permit requirements for certain cemetery  
contracts; requiring approval of Banking Commissioner  
and payment of fees for certain transactions;  
allowing use of surety bonds for certain  
transactions; amending 8 O.S. 2001, Section 304, as  
amended by Section 27, Chapter 57, O.S.L. 2003 (8  
O.S. Supp. 2008, Section 304), which relates to  
contract requirements of Cemetery Merchandise Trust  
Act; providing certain requirements on the sale of  
the opening or closing of burial spaces; amending 8

1 O.S. 2001, Section 307, which relates to surety bonds  
2 as alternative to trust requirements in Cemetery  
3 Merchandise Trust Act; providing restrictions on use  
4 of surety bonds; providing an effective date; and  
5 declaring an emergency.

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

7 SECTION 1. AMENDATORY 6 O.S. 2001, Section 201, as last  
8 amended by Section 1, Chapter 275, O.S.L. 2008 (6 O.S. Supp. 2008,  
9 Section 201), is amended to read as follows:

10 Section 201. A. There shall be a Banking Department, with a  
11 main office located at 2900 North Lincoln Boulevard, Oklahoma City,  
12 Oklahoma, which shall be a separate department of the state  
13 government charged with supervision of the activities in this state  
14 as provided in the Oklahoma Banking Code of 1997 and in other  
15 legislation conferring jurisdiction upon the Department.

16 B. The head of the Department shall be the Commissioner. The  
17 Commissioner shall be appointed by the Governor with the advice and  
18 consent of the Senate. The Commissioner shall have been a qualified  
19 elector of the state for at least three (3) years prior to the  
20 appointment, shall be at least thirty-five (35) years old and shall  
21 have had ten (10) years' experience as a bank officer or employee,  
22 or five (5) years' experience as a bank president or managing  
23 officer of a bank, or five (5) years' experience as a state or  
24 federal bank examiner. The Commissioner shall be appointed for a

1 term of four (4) years. The Commissioner shall continue to serve  
2 until a successor is duly appointed, confirmed and qualified. The  
3 Commissioner may be removed by the Governor for cause after notice  
4 and hearing. A successor to a Commissioner who dies, resigns or is  
5 removed shall be appointed in the same manner as provided in this  
6 section.

7 C. 1. The Commissioner shall appoint a Deputy Commissioner who  
8 may also serve as secretary to the Board hereinafter created. The  
9 Deputy Commissioner shall have been a qualified elector of the state  
10 for at least three (3) years prior to the appointment, shall be at  
11 least thirty (30) years old and shall have had five (5) years'  
12 experience as a bank officer or employee, or three (3) years'  
13 experience as a bank president or managing officer of a bank, or  
14 five (5) years' experience as a state or federal bank examiner. If  
15 the office of the Commissioner is vacant or if the Commissioner is  
16 absent or unable to act, the Deputy Commissioner shall be the acting  
17 Commissioner.

18 2. The Commissioner may appoint Administrative Assistants whose  
19 administrative duties shall be prescribed by the Commissioner.

20 3. The Attorney General is hereby authorized to appoint an  
21 Assistant Attorney General, in addition to those now provided by  
22 law, to be assigned to the Department. The Assistant Attorney  
23 General shall perform such additional duties as may be assigned by  
24 the Attorney General, and shall otherwise be subject to all

1 provisions of the statutes relating to Assistant Attorneys General.  
2 The Banking Department is authorized to pay all or any part of the  
3 salary of the Assistant Attorney General.

4 4. The Commissioner may also appoint a Budget Director for the  
5 Department, a Credit Union Administrator and Assistant Deputy  
6 Commissioners. The Budget Director, Credit Union Administrator and  
7 Assistant Deputy Commissioners shall have the duties and authority  
8 as prescribed by the Commissioner.

9 5. The Commissioner shall prepare in writing a manual of all  
10 employee positions for the Department, including job  
11 classifications, seniority status, personnel qualifications, duties,  
12 maximum and minimum salary schedules and other personnel information  
13 for approval by the Board. The Commissioner may select, appoint and  
14 employ such accountants, attorneys, auditors, examiners, clerks,  
15 secretaries, stenographers and other personnel as the Commissioner  
16 deems necessary for the proper administration of the Department and  
17 any other statutory duties of the Commissioner.

18 D. All officers and employees of the Department shall be in the  
19 exempt unclassified service as provided for in Section 840-5.5 of  
20 Title 74 of the Oklahoma Statutes. All future appointees to such  
21 positions shall be in the exempt unclassified service. Except as  
22 provided in subsection B of this section, officers and employees of  
23 the Department shall not be terminable except for cause as defined  
24 by the Board.

1 E. The Commissioner may delegate to any officer or employee of  
2 the Department any of the powers of the Commissioner and may  
3 designate any officer or employee of the Department to perform any  
4 of the duties of the Commissioner.

5 F. The Commissioner, Deputy Commissioner, Assistants to the  
6 Commissioner, credit union administrator, budget director, Assistant  
7 Deputy Commissioners, examiners, examiner-trainees, and all other  
8 personnel shall, before entering upon the discharge of their duties,  
9 take and subscribe to the oath of office required of state officers  
10 as provided by Section 36.2A of Title 51 of the Oklahoma Statutes.

11 G. 1. The Commissioner shall adopt an appropriate seal as the  
12 Seal of the State Banking Commissioner.

13 2. Every certificate, assignment and conveyance executed by the  
14 Commissioner, in pursuance of the authority conferred upon the  
15 Commissioner by law and sealed with the seal of the Department,  
16 shall be received in evidence and recorded in the proper recording  
17 offices in the same manner as a deed regularly acknowledged, as  
18 required by law.

19 3. Whenever it is necessary for the Commissioner to approve any  
20 instrument or to affix the official seal thereto, the Commissioner  
21 may charge a fee for affixing the approval of the Commissioner or  
22 the official seal to such instrument. Copies of all records and  
23 papers in the office of the Department, certified by the  
24 Commissioner and authenticated by the seal, shall be received in

1 evidence in all cases equally and of like effect as the original.  
2 Whenever it is proper to furnish a copy of any paper filed in the  
3 Department or to certify such paper, the Commissioner may charge a  
4 fee for furnishing such copy, for affixing the official seal on such  
5 copy and/or for certifying the same.

6 SECTION 2. AMENDATORY 6 O.S. 2001, Section 422, is  
7 amended to read as follows:

8 Section 422. A. Any bank, savings and loan association or  
9 credit union located within the State of Oklahoma may install,  
10 operate or utilize consumer banking electronic facilities, provided  
11 written notice is given to the Commissioner prior to the  
12 commencement of operations of each facility. Such notice shall  
13 contain any reasonable descriptive information pertaining to the  
14 facility as shall be required by the rules or regulations of the  
15 Board.

16 B. A consumer banking electronic facility, when located other  
17 than at a bank's principal office or detached facility, may be  
18 operated exclusively by customers or transactions may be performed  
19 through the assistance of any person provided that person is not  
20 employed, either directly or indirectly, by any bank, bank holding  
21 company or subsidiary, savings and loan association or credit union.  
22 Such assistance shall not be deemed to be engaging in the business  
23 of banking. Persons assisting bank customers at the site of a  
24 consumer banking electronic facility may be trained by bank

1 employees and nothing in this section shall be construed to prohibit  
2 periodic servicing of a consumer banking electronic facility by a  
3 bank, savings and loan association or credit union employee. Under  
4 no circumstances may an employee of a bank, bank holding company,  
5 affiliate or subsidiary thereof, savings and loan association or  
6 credit union perform transactions for others at the consumer banking  
7 electronic facility. However, a consumer banking electronic  
8 facility located on the business premises of a person engaged in the  
9 sale of goods or services may be used to perform internal nonbanking  
10 functions for such persons.

11 C. Consumer banking electronic facility transactions shall be  
12 considered as the conduct of banking transactions at the  
13 headquarters' location of the bank, savings and loan association or  
14 credit union for which the data is transmitted.

15 D. ~~1. A bank or combination of banks or business entity,~~  
16 ~~association or organization offering such services to a bank,~~  
17 ~~savings and loan association or credit union which establishes or~~  
18 ~~maintains a manned or unmanned consumer banking electronic facility~~  
19 ~~or facilities shall make the use thereof available to banks, savings~~  
20 ~~and loan associations or credit unions located in Oklahoma on a fair~~  
21 ~~and equitable basis of nondiscriminatory access and rates.~~  
22 ~~Provided, that if a retailer does accept any credit or debit card or~~  
23 ~~other system, nothing herein shall be construed to deprive such~~

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1 ~~retailer of the right to accept or reject any other credit or debit~~  
2 ~~card or other system offered by any other bank or business entity.~~

3 ~~2. A bank, combination of banks, savings and loan association~~  
4 ~~or credit union which establishes and maintains a manned consumer~~  
5 ~~banking electronic facility or facilities may make the use thereof~~  
6 ~~available on a reciprocal basis to other banks, savings and loan~~  
7 ~~associations and credit unions located in Oklahoma on a fair and~~  
8 ~~equitable basis of nondiscriminatory access and rates.~~

9 ~~3. In the event of a dispute, the Board shall have the~~  
10 ~~jurisdiction to determine, after a hearing conducted upon notice and~~  
11 ~~pursuant to regulations adopted by the Board, what constitutes a~~  
12 ~~fair and equitable basis of nondiscriminatory access and rates,~~  
13 ~~based upon cost of installation and proportionate usage of the~~  
14 ~~facility. A principal factor in any equitable formula of shared~~  
15 ~~costs of installation and/or operation shall give weight to the~~  
16 ~~number of transactions of each participating bank, savings and loan~~  
17 ~~association or credit union.~~

18 ~~4. Proceedings of the Board under this section shall be subject~~  
19 ~~to the Administrative Procedures Act of Oklahoma~~ A person not  
20 holding a certificate of authority to operate as a bank, credit  
21 union, or savings association may install, operate and utilize  
22 consumer banking electronic facilities only after filing a  
23 registration statement with the Banking Department pursuant to the  
24 requirements of Section 104 of this title and any rules promulgated



1 thereunder by the State Banking Board. Provided however, a person  
2 filing a registration statement solely in connection with bank or  
3 trust-related activities involving consumer banking electronic  
4 facilities shall pay to the Department a fee no greater than Fifty  
5 Dollars (\$50.00) per facility, up to a maximum of Five Hundred  
6 Dollars (\$500.00), notwithstanding any rule by the Board that may  
7 establish a higher fee.

8 SECTION 3. AMENDATORY 6 O.S. 2001, Section 709, is  
9 amended to read as follows:

10 Section 709. A. Dividends. Notwithstanding any other  
11 provision of law, whether related to restrictions upon payment of  
12 dividends upon capital stock or otherwise, the holders of preferred  
13 stock shall be entitled to receive cumulative dividends only if  
14 provided for in the bank or trust company's certificate of  
15 incorporation or amendment thereto.

16 B. Dividends on common stock may not be paid until dividends on  
17 preferred stock have been paid - Retirement. No dividends shall be  
18 declared or paid on common stock until the cumulative dividends on  
19 the preferred stock shall have been paid in full. If the bank or  
20 trust company is placed in voluntary or involuntary liquidation, no  
21 dividends shall be paid to the holders of common stock until the  
22 holders of preferred stock shall have been paid in full the par  
23 value or the retirement price (whichever is greater) of such stock  
24 plus ~~all~~ any authorized accumulated dividends.

1 C. Voting rights - Conversion - Retirement. Preferred stock  
2 shall have such voting and conversion rights and such control of  
3 management, and shall be subject to retirement at such price and in  
4 such manner and upon such conditions, as may be provided in the  
5 certificate of incorporation or any amendment thereto, with the  
6 approval of the Board.

7 SECTION 4. AMENDATORY 8 O.S. 2001, Section 168, is  
8 amended to read as follows:

9 Section 168. A. The provisions of the Perpetual Care Fund Act  
10 shall not apply to municipal, religious, fraternal, ~~corporate, rural~~  
11 or nonprofit entities, free community burial grounds, county  
12 cemetery associations, Indian tribal cemeteries on tribal land and  
13 charitable or eleemosynary institutions operating cemeteries in this  
14 state.

15 B. The provisions of the Perpetual Care Fund Act may apply to  
16 unincorporated cemetery associations operating cemeteries in this  
17 state. Unincorporated cemetery associations that make application  
18 with the State Bank Commissioner to maintain a perpetual care fund  
19 and are approved by the Commissioner shall comply with all  
20 provisions of the Perpetual Care Fund Act.

21 SECTION 5. AMENDATORY 8 O.S. 2001, Section 302, is  
22 amended to read as follows:

23 Section 302. As used in the Cemetery Merchandise Trust Act:  
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1        1. "Cemetery merchandise" means markers, memorials, vases,  
2 memorial vases, monuments, equipment, crypts, niches or outer  
3 enclosures. Cemetery merchandise shall not include the sale of  
4 lands or interests therein as grave lots or grave spaces; burial or  
5 interment rights; and delivered or installed crypts, niches or outer  
6 enclosures;

7        2. "Purchase price" means the gross amount to be paid for  
8 cemetery merchandise under the provisions of a prepaid cemetery  
9 merchandise contract. Purchase price shall not include finance  
10 charges, sales tax, charges for real property interests or charges  
11 for credit life insurance;

12        3. "Prepaid cemetery merchandise contract" means any agreement  
13 for the sale of cemetery merchandise by an organization which  
14 requires payment of the purchase price, in whole or in part, prior  
15 to delivery of the cemetery merchandise, which agreement is entered  
16 into from and after ~~the effective date of this act~~ November 1, 1989;

17        4. "Minimum funding requirement" means that portion of the  
18 purchase price equal to one hundred ten percent (110%) of the  
19 wholesale cost, ~~freight on board~~ plus delivery charges, ~~to the~~  
20 ~~organization~~ of the cemetery merchandise covered in a prepaid  
21 cemetery merchandise contract. ~~Wholesale costs shall be determined~~  
22 ~~by the organization on the basis of such quotations and price lists~~  
23 ~~as are available to the organization from the wholesale concerns;~~

1        5. "Organization" means any individual, firm, partnership,  
2 trust, corporation, association or entity. Organization shall not  
3 include state, county, municipal, township, rural community,  
4 religious, fraternal or nonprofit entities, free community burial  
5 grounds, county cemetery associations, Indian tribal cemeteries on  
6 tribal land and charitable or eleemosynary institutions operating  
7 cemeteries in this state;

8        6. "Outer enclosure" means a grave liner, grave box, or grave  
9 vault;

10       7. "Lawn crypt" means a subsurface permanent outer enclosure  
11 installed before need in multiple units for the purpose of interring  
12 human remains;

13       8. "Board" means the State Banking Board;

14       9. "Financial institution" means a federally insured bank,  
15 trust company, or savings and loan association which is authorized  
16 to do business in this state; ~~and~~

17       10. "Commissioner" means the State Banking Commissioner; and

18       11. "Wholesale cost" means an amount determined on the basis of  
19 such standard quotations and price lists as are published by the  
20 vendor of the cemetery merchandise, without regard to any discounts  
21 that may be available to the organization.

22       SECTION 6.        AMENDATORY        8 O.S. 2001, Section 303, is  
23 amended to read as follows:  
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1       Section 303. A. Any organization which shall accept money or  
2 anything of value for cemetery merchandise pursuant to a prepaid  
3 cemetery merchandise contract shall first obtain a permit from the  
4 State Banking Commissioner authorizing the transaction of this type  
5 of business before entering into any such contract. It shall be  
6 unlawful to sell any prepaid cemetery merchandise unless the  
7 organization holds a valid, current permit at the time such contract  
8 is made. The organization shall not be entitled to enforce a  
9 contract made in violation of the Cemetery Merchandise Trust Act,  
10 but the purchaser, or the heirs or legal representative of the  
11 purchaser, shall be entitled to recover triple the amounts paid to  
12 the organization with interest thereon at the rate of six percent  
13 (6%) per annum under any contract made in violation hereof.

14       B. An organization with any prepaid cemetery merchandise  
15 contracts subject to the provisions of the Cemetery Merchandise  
16 Trust Act shall apply for, and obtain, approval of the Commissioner  
17 before transferring or conveying in any manner the cemetery, its  
18 obligations or both the cemetery and its obligations under such  
19 prepaid cemetery merchandise contracts. Such application shall be  
20 accompanied by a fee equal to that required under Section 305 of  
21 this title and shall include such information as the Commissioner  
22 may prescribe. The Commissioner shall not approve any such transfer  
23 or conveyance until the applicant has provided sufficient evidence  
24 that a trust fund equal to the minimum funding requirement is

1 maintained pursuant to Section 306 of this title or the applicant  
2 has obtained a surety bond pursuant to the provisions of Section 307  
3 of this title.

4 SECTION 7. AMENDATORY 8 O.S. 2001, Section 304, as  
5 amended by Section 27, Chapter 57, O.S.L. 2003 (8 O.S. Supp. 2008,  
6 Section 304), is amended to read as follows:

7 Section 304. A. The Cemetery Merchandise Trust Act, Section  
8 302 et seq. of this title, shall be administered by the State  
9 Banking Commissioner. The Commissioner is authorized to promulgate  
10 reasonable rules concerning the keeping and inspection of records,  
11 the filing of contracts and reports, investments of and handling of  
12 the trust funds, and all other matters incidental to the orderly  
13 administration of this law. Any reference to the Oklahoma Banking  
14 Board in rules promulgated pursuant to the Cemetery Merchandise  
15 Trust Act shall mean the State Banking Commissioner. The rules  
16 promulgated by the Oklahoma Banking Board prior to the effective  
17 date of this act shall continue in effect until such rules are  
18 amended or repealed by rule of the Commissioner promulgated pursuant  
19 to the provisions of Article I of the Administrative Procedures Act.  
20 All prepaid cemetery merchandise contracts must be in writing, and  
21 no such contract form shall be used without first being submitted to  
22 the Commissioner.

23 B. An organization aggrieved by an action or order of the  
24 Commissioner may appeal the action or order to the State Banking

1 Board which may then affirm, modify or reverse the action or order  
2 of the Commissioner as provided by the Administrative Procedures  
3 Act.

4 C. The provisions of the Cemetery Merchandise Trust Act shall  
5 not be applicable to any organization that has obtained a permit  
6 pursuant to Section 6121 of Title 36 of the Oklahoma Statutes if the  
7 organization is in compliance with the provisions of Sections 6121  
8 through 6136.18 of Title 36 of the Oklahoma Statutes with respect to  
9 items that are considered cemetery merchandise pursuant to the  
10 Cemetery Merchandise Trust Act.

11 D. Unless sold pursuant to a permit issued under Section 6121  
12 of Title 36 of the Oklahoma Statutes, no organization in Oklahoma  
13 may sell, in advance of actual need, the services of opening or  
14 closing a burial space, as defined in Section 162 of this title,  
15 unless the organization deposits in trust no less than sixty-five  
16 percent (65%) of the principal amount of the services sold, or  
17 maintains a surety bond for the full principal amount of the  
18 services sold. Any contracts for such services sold before July 1,  
19 2009, remain enforceable by the purchaser against the seller.

20 SECTION 8. AMENDATORY 8 O.S. 2001, Section 307, is  
21 amended to read as follows:

22 Section 307. A. As an alternative to the trust requirements of  
23 Section 306 of this title, an organization may purchase a surety  
24 bond in an amount not less than the ~~aggregate value of outstanding~~

1 ~~liabilities on undelivered prepaid cemetery merchandise contracts.~~

2 ~~For the purposes of this section, the term "outstanding liabilities"~~

3 ~~means the gross replacement or wholesale value of the prepaid~~

4 ~~cemetery merchandise~~ minimum funding requirement.

5 B. The bond shall be made payable to the State of Oklahoma for  
6 the benefit of the State Banking Commissioner and all purchasers of  
7 prepaid cemetery merchandise. The bond shall be approved by the  
8 Commissioner.

9 C. The Commissioner ~~shall~~ may establish by rule the  
10 requirements and guidelines for the bonds required herein.

11 D. A surety bond maintained under the provisions of this  
12 section or Section 304 of this title may be cancelled or terminated  
13 by the surety only by providing notice to the Commissioner, no later  
14 than ninety (90) days before the effective date of such cancellation  
15 or termination. Notwithstanding such cancellation, termination, or  
16 expiration of a bond maintained under this section or Section 304 of  
17 this title, the surety shall remain liable for obligations arising  
18 during the term of the bond and prior to the termination,  
19 cancellation or expiration.

20 SECTION 9. This act shall become effective July 1, 2009.

21 SECTION 11. It being immediately necessary for the preservation  
22 of the public peace, health and safety, an emergency is hereby  
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1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval  
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