

1 ENGROSSED HOUSE
2 BILL NO. 1618

By: Sullivan of the House

and

Jolley of the Senate

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7 An Act relating to banks and trust companies;
8 amending 6 O.S. 2001, Section 201, as last amended by
9 Section 1, Chapter 275, O.S.L. 2008 (6 O.S. Supp.
10 2008, Section 201), which relates to Banking
11 Department organization and duties; providing for a
12 main office location; amending 6 O.S. 2001, Section
13 422, which relates to electronic consumer banking
14 facilities; requiring that certain persons file a
15 registration statement and pay certain fees;
16 eliminating requirement that certain entities provide
17 nondiscriminatory access to certain facilities;
18 eliminating authority for certain reciprocal
19 agreements; amending 6 O.S. 2001, Section 709, which
20 relates to shareholder rights to receive certain
21 dividends; limiting right to receive dividends to
22 certain circumstances; specifying dividends to be
23 paid in the event of a bank or trust company
24 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
O.S. 2001, Section 307, which relates to surety bonds
as alternative to trust requirements in Cemetery

1 Merchandise Trust Act; providing restrictions on use
2 of surety bonds; providing an effective date; and
3 declaring an emergency.
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5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

15 B. The head of the Department shall be the Commissioner. The
16 Commissioner shall be appointed by the Governor with the advice and
17 consent of the Senate. The Commissioner shall have been a qualified
18 elector of the state for at least three (3) years prior to the
19 appointment, shall be at least thirty-five (35) years old and shall
20 have had ten (10) years' experience as a bank officer or employee,
21 or five (5) years' experience as a bank president or managing
22 officer of a bank, or five (5) years' experience as a state or
23 federal bank examiner. The Commissioner shall be appointed for a
24 term of four (4) years. The Commissioner shall continue to serve

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

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

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

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

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

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

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

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

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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;~~

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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
23 declared to exist, by reason whereof this act shall take effect and
24 be in full force from and after its passage and approval.

1 Passed the House of Representatives the 3rd day of March, 2009.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2009.

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9 Presiding Officer of the Senate