

THE HOUSE OF REPRESENTATIVES
Thursday, February 26, 2009

**Committee Substitute for
House Bill No. 1618**

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1618 - By: SULLIVAN of the House and JOLLEY of the Senate.

An Act relating to banks and trust companies; amending 6 O.S. 2001, Section 201, as last amended by Section 1, Chapter 275, O.S.L. 2008 (6 O.S. Supp. 2008, Section 201), which relates to Banking Department organization and duties; providing for a main office location; amending 6 O.S. 2001, Section 422, which relates to electronic consumer banking facilities; requiring that certain persons file a registration statement and pay certain fees; eliminating requirement that certain entities provide nondiscriminatory access to certain facilities; eliminating authority for certain reciprocal agreements; amending 6 O.S. 2001, Section 709, which relates to shareholder rights to receive certain dividends; limiting right to receive dividends to certain circumstances; specifying dividends to be 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 O.S. 2001, Section 307, which relates to surety bonds as alternative to trust requirements in Cemetery Merchandise Trust Act; providing restrictions on use of surety bonds; providing an effective date; and declaring an emergency.

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

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

4 Section 201. A. There shall be a Banking Department, with a main office located at
5 2900 North Lincoln Boulevard, Oklahoma City, Oklahoma, which shall be a separate
6 department of the state government charged with supervision of the activities in this
7 state as provided in the Oklahoma Banking Code of 1997 and in other legislation
8 conferring jurisdiction upon the Department.

9 B. The head of the Department shall be the Commissioner. The Commissioner
10 shall be appointed by the Governor with the advice and consent of the Senate. The
11 Commissioner shall have been a qualified elector of the state for at least three (3) years
12 prior to the appointment, shall be at least thirty-five (35) years old and shall have had
13 ten (10) years' experience as a bank officer or employee, or five (5) years' experience as a
14 bank president or managing officer of a bank, or five (5) years' experience as a state or
15 federal bank examiner. The Commissioner shall be appointed for a term of four (4)
16 years. The Commissioner shall continue to serve until a successor is duly appointed,
17 confirmed and qualified. The Commissioner may be removed by the Governor for cause
18 after notice and hearing. A successor to a Commissioner who dies, resigns or is removed
19 shall be appointed in the same manner as provided in this section.

20 C. 1. The Commissioner shall appoint a Deputy Commissioner who may also serve
21 as secretary to the Board hereinafter created. The Deputy Commissioner shall have been
22 a qualified elector of the state for at least three (3) years prior to the appointment, shall

1 be at least thirty (30) years old and shall have had five (5) years' experience as a bank
2 officer or employee, or three (3) years' experience as a bank president or managing officer
3 of a bank, or five (5) years' experience as a state or federal bank examiner. If the office of
4 the Commissioner is vacant or if the Commissioner is absent or unable to act, the Deputy
5 Commissioner shall be the acting Commissioner.

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

8 3. The Attorney General is hereby authorized to appoint an Assistant Attorney
9 General, in addition to those now provided by law, to be assigned to the Department.
10 The Assistant Attorney General shall perform such additional duties as may be assigned
11 by the Attorney General, and shall otherwise be subject to all provisions of the statutes
12 relating to Assistant Attorneys General. The Banking Department is authorized to pay
13 all or any part of the salary of the Assistant Attorney General.

14 4. The Commissioner may also appoint a Budget Director for the Department, a
15 Credit Union Administrator and Assistant Deputy Commissioners. The Budget Director,
16 Credit Union Administrator and Assistant Deputy Commissioners shall have the duties
17 and authority as prescribed by the Commissioner.

18 5. The Commissioner shall prepare in writing a manual of all employee positions
19 for the Department, including job classifications, seniority status, personnel
20 qualifications, duties, maximum and minimum salary schedules and other personnel
21 information for approval by the Board. The Commissioner may select, appoint and
22 employ such accountants, attorneys, auditors, examiners, clerks, secretaries,

1 stenographers and other personnel as the Commissioner deems necessary for the proper
2 administration of the Department and any other statutory duties of the Commissioner.

3 D. All officers and employees of the Department shall be in the exempt unclassified
4 service as provided for in Section 840-5.5 of Title 74 of the Oklahoma Statutes. All future
5 appointees to such positions shall be in the exempt unclassified service. Except as
6 provided in subsection B of this section, officers and employees of the Department shall
7 not be terminable except for cause as defined by the Board.

8 E. The Commissioner may delegate to any officer or employee of the Department
9 any of the powers of the Commissioner and may designate any officer or employee of the
10 Department to perform any of the duties of the Commissioner.

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

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

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

1 3. Whenever it is necessary for the Commissioner to approve any instrument or to
2 affix the official seal thereto, the Commissioner may charge a fee for affixing the
3 approval of the Commissioner or the official seal to such instrument. Copies of all
4 records and papers in the office of the Department, certified by the Commissioner and
5 authenticated by the seal, shall be received in evidence in all cases equally and of like
6 effect as the original. Whenever it is proper to furnish a copy of any paper filed in the
7 Department or to certify such paper, the Commissioner may charge a fee for furnishing
8 such copy, for affixing the official seal on such copy and/or for certifying the same.

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

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

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

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

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

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

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

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

13 ~~4. Proceedings of the Board under this section shall be subject to the~~
14 ~~Administrative Procedures Act of Oklahoma~~ A person not holding a certificate of
15 authority to operate as a bank, credit union, or savings association may install, operate
16 and utilize consumer banking electronic facilities only after filing a registration
17 statement with the Banking Department pursuant to the requirements of Section 104 of
18 this title and any rules promulgated thereunder by the State Banking Board. Provided
19 however, a person filing a registration statement solely in connection with bank or trust-
20 related activities involving consumer banking electronic facilities shall pay to the
21 Department a fee no greater than Fifty Dollars (\$50.00) per facility, up to a maximum of

1 Five Hundred Dollars (\$500.00), notwithstanding any rule by the Board that may
2 establish a higher fee.

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

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

10 B. Dividends on common stock may not be paid until dividends on preferred stock
11 have been paid - Retirement. No dividends shall be declared or paid on common stock
12 until the cumulative dividends on the preferred stock shall have been paid in full. If the
13 bank or trust company is placed in voluntary or involuntary liquidation, no dividends
14 shall be paid to the holders of common stock until the holders of preferred stock shall
15 have been paid in full the par value or the retirement price (whichever is greater) of such
16 stock plus ~~all~~ any authorized accumulated dividends.

17 C. Voting rights - Conversion - Retirement. Preferred stock shall have such voting
18 and conversion rights and such control of management, and shall be subject to
19 retirement at such price and in such manner and upon such conditions, as may be
20 provided in the certificate of incorporation or any amendment thereto, with the approval
21 of the Board.

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

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

7 B. The provisions of the Perpetual Care Fund Act may apply to unincorporated
8 cemetery associations operating cemeteries in this state. Unincorporated cemetery
9 associations that make application with the State Bank Commissioner to maintain a
10 perpetual care fund and are approved by the Commissioner shall comply with all
11 provisions of the Perpetual Care Fund Act.

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

14 Section 302. As used in the Cemetery Merchandise Trust Act:

15 1. "Cemetery merchandise" means markers, memorials, vases, memorial vases,
16 monuments, equipment, crypts, niches or outer enclosures. Cemetery merchandise shall
17 not include the sale of lands or interests therein as grave lots or grave spaces; burial or
18 interment rights; and delivered or installed crypts, niches or outer enclosures;

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

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

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

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

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

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

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

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

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

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

4 SECTION 6. AMENDATORY 8 O.S. 2001, Section 303, is amended to read as
5 follows:

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

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

1 conveyance until the applicant has provided sufficient evidence that a trust fund equal to
2 the minimum funding requirement is maintained pursuant to Section 306 of this title or
3 the applicant has obtained a surety bond pursuant to the provisions of Section 307 of this
4 title.

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

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

20 B. An organization aggrieved by an action or order of the Commissioner may
21 appeal the action or order to the State Banking Board which may then affirm, modify or

1 reverse the action or order of the Commissioner as provided by the Administrative
2 Procedures Act.

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

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

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

17 Section 307. A. As an alternative to the trust requirements of Section 306 of this
18 title, an organization may purchase a surety bond in an amount not less than the
19 ~~aggregate value of outstanding liabilities on undelivered prepaid cemetery merchandise~~
20 ~~contracts. For the purposes of this section, the term "outstanding liabilities" means the~~
21 ~~gross replacement or wholesale value of the prepaid cemetery merchandise~~ minimum
22 funding requirement.

1 B. The bond shall be made payable to the State of Oklahoma for the benefit of the
2 State Banking Commissioner and all purchasers of prepaid cemetery merchandise. The
3 bond shall be approved by the Commissioner.

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

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

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

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

17 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
18 FINANCIAL SERVICES, dated 02-25-09 - DO PASS, As Amended and Coauthored.