

EHB 1618

THE STATE SENATE
Thursday, March 19, 2009

ENGROSSED

House Bill No. 1618

As Amended

ENGROSSED HOUSE BILL NO. 1618 - By: Sullivan of the House and Jolley and Ivester of the Senate.

[banks and trust companies - Banking Department organization - effective date - emergency]

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

SECTION 1. AMENDATORY 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), is amended to read as follows:

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

B. The head of the Department shall be the Commissioner. The Commissioner shall be appointed by the Governor with the advice and consent of the Senate. The Commissioner shall have been a qualified elector of the state for at least three (3) years prior to the appointment, shall be at least thirty-five (35) years old and shall

1 have had ten (10) years' experience as a bank officer or employee,
2 or five (5) years' experience as a bank president or managing
3 officer of a bank, or five (5) years' experience as a state or
4 federal bank examiner. The Commissioner shall be appointed for a
5 term of four (4) years. The Commissioner shall continue to serve
6 until a successor is duly appointed, confirmed and qualified. The
7 Commissioner may be removed by the Governor for cause after notice
8 and hearing. A successor to a Commissioner who dies, resigns or is
9 removed shall be appointed in the same manner as provided in this
10 section.

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

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

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

9 4. The Commissioner may also appoint a Budget Director for the
10 Department, a Credit Union Administrator and Assistant Deputy
11 Commissioners. The Budget Director, Credit Union Administrator and
12 Assistant Deputy Commissioners shall have the duties and authority
13 as prescribed by the Commissioner.

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

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

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

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

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

20 2. Every certificate, assignment and conveyance executed by the
21 Commissioner, in pursuance of the authority conferred upon the
22 Commissioner by law and sealed with the seal of the Department,
23 shall be received in evidence and recorded in the proper recording

1 offices in the same manner as a deed regularly acknowledged, as
2 required by law.

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

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

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

1 B. A consumer banking electronic facility, when located other
2 than at a bank's principal office or detached facility, may be
3 operated exclusively by customers or transactions may be performed
4 through the assistance of any person provided that person is not
5 employed, either directly or indirectly, by any bank, bank holding
6 company or subsidiary, savings and loan association or credit union.
7 Such assistance shall not be deemed to be engaging in the business
8 of banking. Persons assisting bank customers at the site of a
9 consumer banking electronic facility may be trained by bank
10 employees and nothing in this section shall be construed to prohibit
11 periodic servicing of a consumer banking electronic facility by a
12 bank, savings and loan association or credit union employee. Under
13 no circumstances may an employee of a bank, bank holding company,
14 affiliate or subsidiary thereof, savings and loan association or
15 credit union perform transactions for others at the consumer banking
16 electronic facility. However, a consumer banking electronic
17 facility located on the business premises of a person engaged in the
18 sale of goods or services may be used to perform internal nonbanking
19 functions for such persons.

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

1 D. 1. ~~A bank or combination of banks or business entity,~~
2 ~~association or organization offering such services to a bank,~~
3 ~~savings and loan association or credit union which establishes or~~
4 ~~maintains a manned or unmanned consumer banking electronic facility~~
5 ~~or facilities shall make the use thereof available to banks, savings~~
6 ~~and loan associations or credit unions located in Oklahoma on a fair~~
7 ~~and equitable basis of nondiscriminatory access and rates.~~

8 ~~Provided, that if a retailer does accept any credit or debit card or~~
9 ~~other system, nothing herein shall be construed to deprive such~~
10 ~~retailer of the right to accept or reject any other credit or debit~~
11 ~~card or other system offered by any other bank or business entity.~~

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

18 3. ~~In the event of a dispute, the Board shall have the~~
19 ~~jurisdiction to determine, after a hearing conducted upon notice and~~
20 ~~pursuant to regulations adopted by the Board, what constitutes a~~
21 ~~fair and equitable basis of nondiscriminatory access and rates,~~
22 ~~based upon cost of installation and proportionate usage of the~~
23 ~~facility. A principal factor in any equitable formula of shared~~

1 ~~costs of installation and/or operation shall give weight to the~~
2 ~~number of transactions of each participating bank, savings and loan~~
3 ~~association or credit union.~~

4 ~~4. Proceedings of the Board under this section shall be subject~~
5 ~~to the Administrative Procedures Act of Oklahoma~~ A person not
6 holding a certificate of authority to operate as a bank, credit
7 union, or savings association may install, operate and utilize
8 consumer banking electronic facilities only after filing a
9 registration statement with the Banking Department pursuant to the
10 requirements of Section 104 of this title and any rules promulgated
11 thereunder by the State Banking Board. Provided however, a person
12 filing a registration statement solely in connection with bank or
13 trust-related activities involving consumer banking electronic
14 facilities shall pay to the Department a fee no greater than Fifty
15 Dollars (\$50.00) per facility, up to a maximum of Five Hundred
16 Dollars (\$500.00), notwithstanding any rule by the Board that may
17 establish a higher fee.

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

20 Section 709. A. Dividends. Notwithstanding any other
21 provision of law, whether related to restrictions upon payment of
22 dividends upon capital stock or otherwise, the holders of preferred
23 stock shall be entitled to receive cumulative dividends only if

1 provided for in the bank or trust company's certificate of
2 incorporation or amendment thereto.

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

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

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

20 Section 168. A. The provisions of the Perpetual Care Fund Act
21 shall not apply to municipal, religious, fraternal, ~~corporate,~~ rural
22 or nonprofit entities, free community burial grounds, county
23 cemetery associations, Indian tribal cemeteries on tribal land and

1 charitable or eleemosynary institutions operating cemeteries in this
2 state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 303. A. Any organization which shall accept money or
16 anything of value for cemetery merchandise pursuant to a prepaid
17 cemetery merchandise contract shall first obtain a permit from the
18 State Banking Commissioner authorizing the transaction of this type
19 of business before entering into any such contract. It shall be
20 unlawful to sell any prepaid cemetery merchandise unless the
21 organization holds a valid, current permit at the time such contract
22 is made. The organization shall not be entitled to enforce a
23 contract made in violation of the Cemetery Merchandise Trust Act,

1 but the purchaser, or the heirs or legal representative of the
2 purchaser, shall be entitled to recover triple the amounts paid to
3 the organization with interest thereon at the rate of six percent
4 (6%) per annum under any contract made in violation hereof.

5 B. An organization with any prepaid cemetery merchandise
6 contracts subject to the provisions of the Cemetery Merchandise
7 Trust Act shall apply for, and obtain, approval of the Commissioner
8 before transferring or conveying in any manner the cemetery, its
9 obligations or both the cemetery and its obligations under such
10 prepaid cemetery merchandise contracts. Such application shall be
11 accompanied by a fee equal to that required under Section 305 of
12 this title and shall include such information as the Commissioner
13 may prescribe. The Commissioner shall not approve any such transfer
14 or conveyance until the applicant has provided sufficient evidence
15 that a trust fund equal to the minimum funding requirement is
16 maintained pursuant to Section 306 of this title or the applicant
17 has obtained a surety bond pursuant to the provisions of Section 307
18 of this title.

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

22 Section 304. A. The Cemetery Merchandise Trust Act, Section
23 302 et seq. of this title, shall be administered by the State

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

15 B. An organization aggrieved by an action or order of the
16 Commissioner may appeal the action or order to the State Banking
17 Board which may then affirm, modify or reverse the action or order
18 of the Commissioner as provided by the Administrative Procedures
19 Act.

20 C. The provisions of the Cemetery Merchandise Trust Act shall
21 not be applicable to any organization that has obtained a permit
22 pursuant to Section 6121 of Title 36 of the Oklahoma Statutes if the
23 organization is in compliance with the provisions of Sections 6121

1 through 6136.18 of Title 36 of the Oklahoma Statutes with respect to
2 items that are considered cemetery merchandise pursuant to the
3 Cemetery Merchandise Trust Act.

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

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

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

22 B. The bond shall be made payable to the State of Oklahoma for
23 the benefit of the State Banking Commissioner and all purchasers of

1 prepaid cemetery merchandise. The bond shall be approved by the
2 Commissioner.

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

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

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

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

19 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 3-17-09 - DO PASS,
20 As Amended and Coauthored.