

EHB 2779

1 THE STATE SENATE  
2 Wednesday, March 17, 2010

3 ENGROSSED

4 House Bill No. 2779

5 As Amended

6 ENGROSSED HOUSE BILL NO. 2779 - By: Ownbey of the House and  
7 Stanislawski of the Senate.

8 [ banks and trust companies - the Banking Department -  
9 organization - powers - liquidation, dissolution, and  
10 reorganization -

11 emergency ]

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

13 SECTION 1. AMENDATORY 6 O.S. 2001, Section 201, as last  
14 amended by Section 1, Chapter 3, O.S.L. 2009 (6 O.S. Supp. 2009,  
15 Section 201), is amended to read as follows:

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

22 B. The head of the Department shall be the Commissioner. The  
23 Commissioner shall be appointed by the Governor with the advice and  
24 consent of the Senate. The Commissioner shall have been a qualified  
25 elector of the state for at least three (3) years prior to the

1 appointment, shall be at least thirty-five (35) years old and shall  
2 have had ten (10) years' experience as a bank officer or employee,  
3 or five (5) years' experience as a bank president or managing  
4 officer of a bank, or five (5) years' experience as a state or  
5 federal bank examiner. The Commissioner shall be appointed for a  
6 term of four (4) years. The Commissioner shall continue to serve  
7 until a successor is duly appointed, confirmed and qualified. The  
8 Commissioner may be removed by the Governor for cause after notice  
9 and hearing. A successor to a Commissioner who dies, resigns or is  
10 removed shall be appointed in the same manner as provided in this  
11 section.

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

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

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

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

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

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

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

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

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

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

22 2. Every certificate, assignment and conveyance executed by the  
23 Commissioner, in pursuance of the authority conferred upon the

1 Commissioner by law and sealed with the seal of the Department,  
2 shall be received in evidence and recorded in the proper recording  
3 offices in the same manner as a deed regularly acknowledged, as  
4 required by law.

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

16 SECTION 2. AMENDATORY 6 O.S. 2001, Section 209, as  
17 amended by Section 5, Chapter 48, O.S.L. 2005 (6 O.S. Supp. 2009,  
18 Section 209), is amended to read as follows:

19 Section 209. A. 1. The State Banking Commissioner shall, at  
20 least every eighteen (18) months or as often as the Commissioner  
21 deems advisable, examine every bank and trust company, and for the  
22 purpose of making such examinations and special examinations, shall  
23 have full access to all books, papers, securities, records and other

1 sources of information under the control of banks and trust  
2 companies. Upon the conclusion of the examination, the Commissioner  
3 may make and file in the office of the Commissioner a report in  
4 detail disclosing the results of such examination or may, on  
5 conditions prescribed by the Commissioner, prepare a summary  
6 memorandum regarding the results of such examination, and shall,  
7 upon request by the bank, mail a copy of such report or memorandum  
8 to the bank or trust company examined. However, the Commissioner  
9 may accept, in lieu of any three consecutive bank examinations, the  
10 examination that may have been made of the bank or trust company  
11 within a reasonable period by the Federal Deposit Insurance  
12 Corporation, the Board of Governors of the Federal Reserve System,  
13 or the Office of Thrift Supervision provided a copy of the  
14 examination, report, or other document prepared as a result of the  
15 examination is furnished to the Commissioner.

16 2. The Commissioner may also accept any other report relative  
17 to the condition of a bank or trust company, to include joint or  
18 concurrent examinations which may be obtained by the authorities  
19 within a reasonable period, in lieu of such report authorized by the  
20 laws of this state to be required of such bank by the Oklahoma State  
21 Banking Department, provided a copy of such report is furnished to  
22 the Commissioner.

1           3. The Commissioner may enter into cooperative, coordinating,  
2 and information-sharing agreements with the Federal Deposit  
3 Insurance Corporation, the Board of Governors of the Federal Reserve  
4 System, or the Office of Thrift Supervision with respect to the  
5 periodic examination or other supervision of any state bank, trust  
6 company, or state thrift.

7           4. When requested in writing upon authority of the board of  
8 directors or stockholders owning a majority of the capital stock of  
9 any bank or trust company, the Commissioner shall, if in the opinion  
10 of the Commissioner such examination is desirable, make or cause to  
11 be made an examination into the affairs and conditions of such bank  
12 or trust company. For such examination such bank or trust company  
13 shall pay the same fees as provided for in subsection B of Section  
14 211 of this title.

15           B. Every bank shall make four reports each year and more often  
16 if called upon by the Commissioner and according to the form which  
17 may be prescribed by the Commissioner, and every trust company shall  
18 make two reports each year and more often if called upon by the  
19 Commissioner and according to the form which may be prescribed by  
20 the Commissioner. They must be verified by the oath or affirmation  
21 of the president, cashier or secretary of such bank or trust  
22 company, attested by the signatures of at least two of the  
23 directors, and shall be retained and made available for inspection

1 upon request of the Commissioner or designated representatives of  
2 the Commissioner. Each such report shall exhibit, in detail and  
3 under appropriate headings, the assets and liabilities of the  
4 corporation at the close of business on any last day by the  
5 Commissioner specified, and shall be transmitted to the Commissioner  
6 within thirty (30) calendar days after the call date, and may be  
7 published at the expense of the bank or trust company in the same  
8 form in which it is made to the Commissioner. The Commissioner  
9 shall also have the power to call for special reports from any bank  
10 or trust company whenever, in the judgment of the Commissioner, the  
11 same are necessary in order to gain a full and complete knowledge of  
12 its condition. However, the reports authorized and required by this  
13 section, to be called for by the Commissioner, shall relate to a  
14 date prior to the date of such call to be specified therein.  
15 Additionally, the Commissioner may accept, in lieu of the reports  
16 referred to in this section, reports made by banks that are members  
17 of the Federal Reserve System on forms provided by the Federal  
18 Reserve System or reports submitted by banks to the Federal Deposit  
19 Insurance Corporation.

20 C. Every bank or trust company which fails to make and transmit  
21 any report required within the discretion of the Commissioner, under  
22 the Oklahoma Banking Code, shall be subject to a penalty not to  
23 exceed Fifty Dollars (\$50.00) for each day, after the period

1 respectively therein mentioned, that the bank or trust company  
2 delays to make and transmit its report. Whenever any bank or trust  
3 delays or refuses to pay the penalty herein imposed for a failure to  
4 make and transmit a report, the Commissioner is hereby authorized to  
5 maintain an action in the name of the state against the delinquent  
6 bank or trust company for the recovery of such penalty, and all sums  
7 collected by such action shall be paid into the Oklahoma State  
8 Banking Department revolving fund pursuant to Section 211.1 of this  
9 title.

10 D. For the purpose of carrying into effect the provisions of  
11 this Code, the Commissioner shall provide a form for such  
12 examinations and reports, and all examinations and reports received  
13 by the Commissioner shall be preserved in the office of the  
14 Commissioner for a period of not less than five (5) years. Such  
15 examination and reports and all other records of operating banks and  
16 trust companies in the Department are to be kept confidential,  
17 except as permitted by this Code. Copies of such examinations and  
18 reports in the possession of an institution under the Department's  
19 supervision are the property of the Department and are not subject  
20 to disclosure to third parties, including disclosure or production  
21 pursuant to subpoena or other request. All requests for review of  
22 such examinations and reports shall be directed to the Department  
23 and are subject to the requirements of Section 208 of this title.

1 SECTION 3. AMENDATORY 6 O.S. 2001, Section 212, is  
2 amended to read as follows:

3 Section 212. A. Commissioner's Report - Contents. The  
4 Commissioner shall report to the Governor annually. The report  
5 shall be a public document and shall include such matters as the  
6 Commissioner deems advisable.

7 B. Copies furnished to Legislature and Oklahoma Publishing  
8 Clearing House. Copies of the annual reports not previously so  
9 submitted shall be submitted to the Legislature at the opening of  
10 each regular session and ~~twenty five (25) copies shall be furnished~~  
11 to the Oklahoma Publishing Clearing House. A copy of the annual  
12 report shall also be published on the Oklahoma State Banking  
13 Department's website.

14 SECTION 4. AMENDATORY 6 O.S. 2001, Section 306.1, as  
15 last amended by Section 4, Chapter 275, O.S.L. 2008 (6 O.S. Supp.  
16 2009, Section 306.1), is amended to read as follows:

17 Section 306.1 A. ~~Once the Commissioner is satisfied that the~~  
18 ~~organizers have substantially complied with the requirements of~~  
19 ~~Section 305 of this title and an organizational expense fund in a~~  
20 ~~minimum amount approved by the Commissioner has been fully funded,~~  
21 ~~the Commissioner shall accept the application for filing and shall~~  
22 ~~notify the organizers of the acceptance. Prior to acceptance by the~~  
23 ~~Commissioner, an applicant shall have one opportunity to correct~~

1 ~~deficiencies in an application. Deficiencies that are not corrected~~  
2 ~~adequately when the application is resubmitted may cause the~~  
3 ~~application to be considered withdrawn or disapproved~~ determines  
4 that a bank or savings association is in danger of failing and all  
5 or part of the deposit liability of such bank or savings association  
6 is to be assumed by a bank being organized for that purpose, the  
7 Board at a meeting closed to the public may approve of the  
8 organization of the acquiring bank and the Commissioner may grant a  
9 certificate of authority to the acquiring bank, and shall not be  
10 bound by the provisions, restrictions, and requirements contained in  
11 Article III of this title. The Commissioner is further empowered in  
12 such event to grant authority to organize a state savings  
13 association and issue a certificate of authority without notice or  
14 hearing and without action of the Board.

15 B. ~~Within ten (10) days after~~ If the Commissioner has accepted  
16 ~~an application for filing, the applicant shall publish notice of the~~  
17 ~~filing in a legal newspaper of general circulation in the city,~~  
18 ~~town, or county in which the proposed bank or trust company is to be~~  
19 ~~located. The notice shall be published on the same day for two (2)~~  
20 ~~consecutive weeks and shall contain a statement that an application~~  
21 ~~has been submitted, the names of the organizers, the name and~~  
22 ~~location of the proposed bank or trust company and the date on which~~  
23 ~~the application was accepted for filing~~ determined that a bank is in

1 danger of failing and the Commissioner must take possession of the  
2 bank pursuant to Article XII of this title, the Board at a meeting  
3 closed to the public may approve of the actions of the Commissioner  
4 and order the Commissioner to tender to the Federal Deposit  
5 Insurance Corporation the appointment as liquidator of the bank.

6 ~~The applicant shall promptly furnish the Commissioner an~~  
7 ~~affidavit evidencing such publication.~~

8 C. If the Commissioner determines that a bank or other company  
9 under the Department's supervision is in danger of failing or is  
10 subject to other conditions or circumstances which, if made public,  
11 could result in deterioration of the bank or other company, the  
12 Board, at a meeting closed to the public, may consider any action  
13 recommended by the Commissioner directed at resolving or improving  
14 upon the conditions or circumstances to which the bank or other  
15 company is subject.

16 SECTION 5. AMENDATORY 6 O.S. 2001, Section 306.2, is  
17 amended to read as follows:

18 Section 306.2 A. In the event the Commissioner determines that  
19 ~~a bank or savings association is in imminent danger of failing and~~  
20 ~~the deposit liability of such bank or savings association is to be~~  
21 ~~assumed by a state bank or state savings association being organized~~  
22 ~~or establishing a branch for that purpose, the Commissioner, or in~~  
23 ~~the case of a state bank upon approval of the Board at a meeting~~

1 ~~closed to the public, is empowered to grant authority to organize a~~  
2 ~~state bank and issue a certificate of authority, or to grant~~  
3 ~~authority to establish a branch and issue a certificate to maintain~~  
4 ~~and operate a branch, without notice or hearing, and shall not be~~  
5 ~~bound by the provisions, restrictions and requirements contained in~~  
6 ~~Sections 301 through 306.1 of this title and Sections 307.1 through~~  
7 ~~313 of this title. The Commissioner is further empowered in such~~  
8 ~~event to grant authority to organize a state savings association and~~  
9 ~~issue a certificate of authority, or to grant authority to establish~~  
10 ~~a branch and issue a certificate to maintain and operate a branch,~~  
11 ~~without notice or hearing and without action of the Board the~~  
12 organizers have substantially complied with the requirements of  
13 Section 305 of this title and an organizational expense fund in a  
14 minimum amount approved by the Commissioner has been fully funded,  
15 the Commissioner shall accept the application for filing and shall  
16 notify the organizers of the acceptance. Prior to acceptance by the  
17 Commissioner, an applicant shall have one opportunity to correct  
18 deficiencies in an application. Deficiencies that are not corrected  
19 adequately when the application is resubmitted may cause the  
20 application to be considered withdrawn or disapproved.

21 B. Within ten (10) days after the Commissioner has accepted an  
22 application for filing, the applicant shall publish notice of such  
23 acceptance in a legal newspaper of general circulation in the city,

1 town, or county in which the proposed bank or trust company is to be  
2 located. The notice shall be published on the same day for two (2)  
3 consecutive weeks and shall contain a statement that an application  
4 has been submitted, the names of the organizers, the name and  
5 location of the proposed bank or trust company and the date on which  
6 the application was accepted for filing. The applicant shall  
7 promptly furnish the Commissioner an affidavit evidencing such  
8 publication.

9 SECTION 6. AMENDATORY 6 O.S. 2001, Section 307.1, as  
10 amended by Section 7, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2009,  
11 Section 307.1), is amended to read as follows:

12 Section 307.1 A. Objectives. The primary objectives of the  
13 State Banking Commissioner and the Banking Board shall be to  
14 maintain a sound banking system, to encourage a competitive banking  
15 environment and to provide convenience to the public.

16 B. Comments or objections. Within twenty-one (21) days after  
17 the first notice by publication as described in Section ~~306.1~~ 306.2  
18 of this title, any interested person may submit to the Commissioner  
19 written comments or objections to organization of the proposed bank,  
20 or a request for an opportunity to be heard by the Commissioner at a  
21 hearing held prior to consideration by the Board of the application  
22 for authority to organize. Any request for opportunity to be heard  
23 shall set forth reasons justifying the time and expense entailed by

1 such hearing before the Commissioner. In the sole discretion of the  
2 Commissioner, the Commissioner may decide to permit such a hearing  
3 or may refuse the request for hearing. If the Commissioner refuses  
4 the request for hearing, the interested person may be heard at the  
5 hearing held by the Board to consider the application. In the  
6 absence of a request, the Commissioner may order a hearing to be  
7 held before the Commissioner if the Commissioner determines that it  
8 is in the public interest.

9 SECTION 7. AMENDATORY 6 O.S. 2001, Section 414, as last  
10 amended by Section 12, Chapter 48, O.S.L. 2005 (6 O.S. Supp. 2009,  
11 Section 414), is amended to read as follows:

12 Section 414. A. 1. A bank or trust company may purchase and  
13 hold real estate, equipment, furniture and fixtures necessary for  
14 the convenient transaction of its business, the cost of which shall  
15 not exceed its capital. This limitation may be exceeded upon  
16 written approval of the State Banking Commissioner.

17 2. With prior approval of the Commissioner, a bank or trust  
18 company may purchase and hold fixtures, facilities and real estate,  
19 including but not limited to storage facilities, facilities for  
20 civic or public use or facilities for the benefit of employees of  
21 the bank, bank customers or the community. No banking business of  
22 any type shall be engaged in or conducted at such facilities.

1           3. A bank or trust company may lease out to such tenants as it  
2 deems appropriate any portion of its banking house or premises not  
3 utilized in the conduct of its banking operations.

4           4. Upon prior written approval of the Commissioner, a bank or  
5 trust company may purchase real estate at a location where the bank  
6 or trust company could lawfully establish an office.

7           5. A state bank may purchase or construct a municipal building,  
8 such as a school building, or other similar public facility and, as  
9 holder of legal title, lease the same to a municipality or other  
10 public authority having resources sufficient to make payment of all  
11 rentals as they become due. The lease agreement shall provide that  
12 upon its expiration the lessee will become owner of the building or  
13 facility.

14           6. Subject to prior approval by the Commissioner and such  
15 conditions and limitations as the Commissioner shall prescribe,  
16 which shall be consistent with any rules the State Banking Board may  
17 prescribe, a state bank may purchase real estate for the purpose of  
18 producing income, sale, or for development and improvement,  
19 including the erection of buildings thereon, for sale or rental  
20 purposes.

21           B. 1. A bank or trust company may purchase and hold real  
22 estate conveyed to it in satisfaction of debts previously contracted  
23 in good faith in the course of business.

1           2. All such real estate shall be accounted for individually at  
2 the lower of the recorded investment in the loan satisfied or its  
3 fair market value on the date of the transfer.

4           3. The recorded investment in the loan satisfied is the unpaid  
5 balance of the loan, increased by accrued and uncollected interest,  
6 unamortized premium, and loan acquisition costs, if any, and  
7 decreased by previous direct write down, finance charges and  
8 unamortized discount, if any.

9           C. Upon notification by the bank to the Commissioner that such  
10 conditions exist that require the expenditure of funds for the  
11 development and improvement of such real estate, and subject to such  
12 conditions and limitations as the Commissioner shall prescribe, the  
13 bank may expend its funds to enable such bank to recover its total  
14 investment.

15           D. A bank or trust company may acquire and hold real estate  
16 such as it shall purchase at sale under judgment, decree or mortgage  
17 foreclosure, under securities held by it.

18           E. 1. Without the written approval of the Commissioner, real  
19 estate acquired in the cases contemplated in subsections B and D of  
20 this section may be held for an initial holding period of no longer  
21 than five (5) years from the date of acquisition. However, a bank  
22 may apply, during the first two (2) years in which the real estate  
23 is acquired by the bank, for approval by the Commissioner to retain

1 such real estate for the purposes described in paragraph 6 of  
2 subsection A of this section. In the case of approval by the  
3 Commissioner, the rules of this subsection shall not apply to such  
4 property. In the absence of such application, or if the application  
5 is denied by the Commissioner, the rules of this subsection shall  
6 apply to the retention of the real estate by the bank.

7 2. Following the expiration of the initial holding period, one  
8 additional extension period of up to five (5) years may be granted  
9 upon the written approval of the Commissioner.

10 3. A bank or trust company must begin to write down the book  
11 value for each property held as other real estate owned a minimum of  
12 ten percent (10%) each year during the additional extension period.  
13 The bank or trust company shall then be required to write off the  
14 remaining balance of the other real-estate-owned property at the end  
15 of the additional extension period.

16 4. Banks or trust companies shall be required to keep current  
17 appraisals on file to substantiate their other real-estate-owned  
18 property book values. A full appraisal or a supplement which  
19 updates a full appraisal, not more than twelve (12) months old,  
20 shall be considered current for purposes of this paragraph.  
21 Provided, however, if a bank has begun writing down the book value  
22 of the property pursuant to paragraph 3 of this subsection, the bank  
23 need not update an appraisal if the book value of the property is

1 fifty percent (50%) or less than the bank's most recent appraised  
2 value.

3 5. Unless a bank has applied for approval by the Commissioner  
4 during the first two (2) years after the real estate is acquired, to  
5 retain such real estate for the purposes described in paragraph 6 of  
6 subsection A of this section, a bank shall also continue efforts to  
7 dispose of the real estate at the earliest possible opportunity.

8 6. At the conclusion of the additional extension period, real  
9 estate must be disposed of or, if approved by the Commissioner, must  
10 be transferred to a subsidiary company of the bank.

11 7. For purposes of this section, ownership interests in oil,  
12 gas and other subsurface mineral rights other than mere leasehold  
13 interests shall be considered real estate. However, notwithstanding  
14 the holding limitation of this section or any other provision  
15 contained herein, any bank or trust company which on October 15,  
16 1982, held, directly or indirectly, any oil, gas and other  
17 subsurface mineral rights, other than mere leasehold interests, that  
18 since December 31, 1979, had not been valued on the books of such  
19 bank or trust company for more than a nominal amount, may continue  
20 to hold such subsurface rights or interest without limitation.

21 F. Any bank or trust company organized under the laws of this  
22 state may invest its funds in the stocks, bonds, debentures or other  
23 such obligations of any corporation holding the premises of such

1 bank or trust company, and may make loans to or upon the security of  
2 any such corporation, but the aggregate of all such investments and  
3 loans together with the investments provided for in subsection A of  
4 this section shall not exceed its capital. This limitation may be  
5 exceeded upon the written approval of the Commissioner.

6 G. Every conveyance of real estate and every lease thereof made  
7 by a bank or trust company shall have the name of such bank or trust  
8 company subscribed thereto, either by an attorney-in-fact,  
9 president, vice-president, chairperson or vice-chairperson of the  
10 board of directors of such corporation.

11 H. Nothing in this section shall preclude or limit in any  
12 manner investments by a bank permitted under any other section of  
13 this Code.

14 SECTION 8. AMENDATORY 6 O.S. 2001, Section 1202, is  
15 amended to read as follows:

16 Section 1202. A. Possession of Commissioner - Hearing. Except  
17 as otherwise provided in this Code, only the State Banking  
18 Commissioner may take possession of a bank, if, after a hearing  
19 before the Banking Board, the Board shall find:

- 20 1. That it is insolvent;
- 21 2. The bank's capital is impaired, and has not been corrected  
22 as provided in Section 220 of this title, or is otherwise in an  
23 unsound condition;

1           3. The bank's business is being conducted in an unlawful or  
2           unsound manner;

3           4. The bank is unable to continue normal operations; or

4           5. That examination of the bank has been obstructed or impeded.

5           B. Notice of possession - Powers and duties of Commissioner -  
6           Tolling of limitations.

7           1. The Commissioner shall take possession by posting upon the  
8           premises a notice reciting that the Commissioner is assuming  
9           possession pursuant to this Code and the time, not earlier than the  
10          posting of the notice, when the Commissioner's possession shall be  
11          deemed to commence. A copy of the notice shall be filed in the  
12          district court in the county in which the institution is located.  
13          Provided, if the Federal Deposit Insurance Corporation is appointed  
14          as liquidator pursuant to the provisions of Section 1205 of this  
15          title, such notice shall not be filed. When notice of possession is  
16          not required to be filed in the district court, references in  
17          Article XII of this title to additional filings, notices, orders, or  
18          approvals, except approvals by the Board of the Commissioner's  
19          actions, shall not apply to the Commissioner's possession or to the  
20          liquidation by the Federal Deposit Insurance Corporation. The  
21          Commissioner shall notify the Federal Reserve Bank of the district  
22          of taking possession of any state bank which is a member of the  
23          Federal Reserve System, and shall notify the Federal Deposit

1 Insurance Corporation of taking possession of any state bank which  
2 is a member of the Federal Deposit Insurance Corporation.

3 2. When the Commissioner has taken possession of a state bank,  
4 the Commissioner shall be vested with the full and exclusive power  
5 of management and control, including the power to continue or to  
6 discontinue the business, to stop or to limit the payment of its  
7 obligations, to employ any necessary assistants, including legal  
8 counsel, to execute any instrument in the name of the bank as  
9 Commissioner of Banking in charge of liquidation, to commence,  
10 defend and conduct in its name any action or proceeding to which it  
11 may be a party, to enforce the liabilities of the stockholders,  
12 officers and directors, to terminate the Commissioner's possession  
13 by restoring the assets of the bank to its board of directors and to  
14 reorganize or liquidate the bank in accordance with the Code. As  
15 soon as practicable after taking possession the Commissioner shall  
16 make an inventory of the assets and file a copy thereof with the  
17 court in which the notice of possession was filed.

18 3. When the Commissioner is in possession and while the  
19 Commissioner's possession continues there shall be a postponement  
20 until six (6) months after such taking, of the date upon which any  
21 period of limitation fixed by statute or agreement would otherwise  
22 expire on a claim or right of action of the bank, or upon which a

1 review must be taken or a pleading or other document must be filed  
2 by the bank in any pending action or proceeding.

3 4. The Commissioner shall, within two (2) days after taking  
4 possession, call and give five (5) days' notice by mail to  
5 stockholders of the bank at their last-known address of a special  
6 meeting for the purpose of allowing the stockholders to designate  
7 the board of directors as the representative of the stockholders or  
8 to allow the election of a new board of directors if the  
9 stockholders should so determine. Such board of directors are  
10 authorized to represent the stockholders in the liquidation  
11 procedures herein, to observe, assist and protect the interest of  
12 the stockholders.

13 a. The board of directors of the bank are authorized to  
14 bring all necessary legal actions for and on behalf of  
15 the stockholders and to pay attorney's fee in a  
16 reasonable amount, if such action benefits the  
17 liquidating account of the insolvent bank.

18 b. The board of directors, as authorized by the  
19 stockholders, shall represent the stockholders in the  
20 district court in which the notice of possession has  
21 been filed by the Commissioner, as to all matters  
22 affecting the bank.

1           5. The corporate entity of the bank shall continue to exist and  
2 may function for all purposes, except as to the assets of and  
3 activities as a banking institution under a charter, and may  
4 function to assist the Commissioner or to protect the stockholders'  
5 interest in the assets of the liquidating account.

6           C. Omission of hearing - Application to vacate possession -  
7 Liquidation - Notice thereof - Objection - Bond of Commissioner -  
8 Reorganization - Immediate liquidation of state banks.

9           1. If in the opinion of the Commissioner an emergency exists  
10 which may result in serious losses to the depositors, the  
11 Commissioner may take possession of a state bank without a prior  
12 hearing. ~~Within~~ Unless liquidation of the bank has been tendered to  
13 the Federal Deposit Insurance Corporation, within ten (10) days  
14 after the Commissioner has taken possession any interested person  
15 may file an application with the Board for an order vacating such  
16 possession. The Board shall grant the application if it finds that  
17 the action of the Commissioner was unwarranted or without sufficient  
18 cause.

19           2. If the Commissioner shall determine to liquidate the bank,  
20 the Commissioner shall give such notice of the Commissioner's  
21 determination to the directors, stockholders, depositors and  
22 creditors as the Board may prescribe. Such notice shall be by  
23 restricted delivery to the directors and stockholders at their last-

1 known address as shown on the records of the bank and notice to the  
2 depositors and creditors shall be published in a legal newspaper  
3 published in the city or town where such bank is located, or if  
4 there be no legal newspaper published in such city or town then in a  
5 legal newspaper having the greatest paid circulation within such  
6 city or town. Any objection to such determination by a person  
7 directly affected shall be filed with the Board within ten (10) days  
8 after such notice is mailed or published. Unless within ten (10)  
9 days thereafter the Board issues an order staying the liquidation or  
10 unless the Board directs the Commissioner to tender to the Federal  
11 Deposit Insurance Corporation the appointment as liquidator under  
12 this section, the Commissioner shall proceed to liquidate the  
13 institution, upon first providing a bond executed by some surety  
14 company authorized to do business in this state, running to the  
15 people of the State of Oklahoma, which meets with the approval of  
16 the Board, for the faithful discharge of the duties of the  
17 Commissioner, in connection with such liquidation and the accounting  
18 for all monies coming into the hands of the Commissioner. The cost  
19 of such bond shall be paid from the assets of the bank. Suit may be  
20 maintained on such bond by any person injured by a breach of  
21 conditions thereof.

22 3. After the Commissioner shall have taken possession of any  
23 bank which is subject to the provisions of this act, the

1 stockholders thereof may repair its credit, restore or substitute  
2 its reserves, and otherwise place it in condition so that it is  
3 qualified to do a general banking business as before it was taken  
4 possession of by the Commissioner; but such bank shall not be  
5 permitted to reopen its business until the Commissioner, after a  
6 careful investigation of its affairs, is of the opinion that its  
7 stockholders have complied with the laws, that the bank's credit and  
8 funds are in all respects repaired, and its reserve restored or  
9 sufficiently substituted, and that it should be permitted again to  
10 reopen for business; whereupon the Commissioner is authorized to  
11 issue written permission for reopening of the bank in the same  
12 manner as permission to do business is granted after the  
13 incorporation thereof, and thereupon the bank may be reopened to do  
14 a general banking business.

15 4. If the Commissioner determines to reorganize the bank or if  
16 the Board, after staying its liquidation, orders such  
17 reorganization, the Commissioner, after according a hearing to all  
18 interested persons, shall enter an order proposing a reorganization  
19 plan. A copy of the plan shall be sent to each depositor and  
20 creditor who will not receive payment of the claim of the depositor  
21 or creditor in full under the plan, together with notice that,  
22 unless within fifteen (15) days the plan is disapproved in writing  
23 by persons holding one-third (1/3) or more of the aggregate amount

1 of such claims, the Commissioner will proceed to effect the  
2 reorganization. A department, agency, or political subdivision of  
3 this state holding a claim which will not be paid in full is  
4 authorized to participate as any other creditor.

5 5. Notwithstanding any other provision of this chapter, the  
6 Commissioner, upon taking possession of a state bank, may  
7 immediately proceed to liquidate the bank, without giving prior  
8 notice to the directors, stockholders, depositors and creditors, if  
9 it is determined by order of the court in which notice of possession  
10 has been filed that:

11 a. the actions of the Commissioner have the approval of  
12 the Board, and

13 b. the immediate liquidation of the bank is necessary to  
14 protect the interests of its depositors and is  
15 otherwise in the public interest.

16 In the proceeding with the immediate liquidation of the bank as  
17 aforesaid, the Commissioner, in order to facilitate the assumption  
18 of the deposit liabilities of the closed bank by another bank, may  
19 borrow moneys from the Federal Deposit Insurance Corporation and  
20 pledge some or all of the assets of the closed bank as security for  
21 such borrowing or the Commissioner may sell some or all of the  
22 assets of the closed bank to the Federal Deposit Insurance  
23 Corporation. When notice of possession has not been filed in the

1 district court, the provisions of this paragraph are satisfied by an  
2 order of the Board approving the actions of the Commissioner and an  
3 order of the Board directing the appointment of the Federal Deposit  
4 Insurance Corporation as liquidator.

5       6. When the Commissioner has taken possession of a state bank  
6 for the purpose of liquidation, neither the ten-day periods provided  
7 by paragraphs 1 and 2 of this subsection ~~C of this section~~ nor the  
8 pendency of any proceeding for review of the Commissioner's action  
9 shall operate to defer, delay, impede or prevent the payment by the  
10 Federal Deposit Insurance Corporation of the insured deposits in the  
11 bank.

12       The Commissioner shall make available to the Federal Deposit  
13 Insurance Corporation such facilities in or of the bank and such  
14 books, records and other relevant data of the bank as may be  
15 necessary or appropriate to enable the Federal Deposit Insurance  
16 Corporation to pay the insured deposits as aforesaid, and the  
17 Federal Deposit Insurance Corporation, its directors, officers,  
18 agents and employees, and the Commissioner, the agents and employees  
19 of the Commissioner, shall be free from any liability to the bank,  
20 its directors, stockholders and creditors, for any action taken in  
21 connection herewith.

22       D. Execution upon bank assets prohibited - Vacation of liens  
23 and transfer of assets.

1           1. No judgment, lien or attachment shall be executed upon any  
2 asset of the bank while it is in the possession of the Commissioner.  
3 Upon the election of the Commissioner in connection with a  
4 liquidation or reorganization:

5           a. any lien or attachment, other than an attorney's or  
6 mechanic's lien, obtained upon any asset of the bank  
7 during the Commissioner's possession or within four  
8 (4) months prior to commencement thereof shall be  
9 vacated and voided except liens created by the  
10 Commissioner while in possession, and

11           b. any transfer of an asset of the bank made after or in  
12 contemplation of its insolvency with intent to effect  
13 a preference shall be voided.

14           2. The provisions of this subsection shall not be construed to  
15 authorize the Commissioner to vacate or void any lien or attachment  
16 obtained by a Federal Reserve Bank upon any asset of the bank or to  
17 void any transfer of an asset of the bank to such Federal Reserve  
18 Bank.

19           E. Power to borrow money and pledge bank's assets. With the  
20 approval of the Board, the Commissioner may borrow money in the name  
21 of the bank and may pledge its assets as security for the loan.

22           F. Commissioner's expenses - Payable out of bank's assets. All  
23 necessary and reasonable expenses of the Commissioner's possession

1 of a bank and of its reorganization or liquidation shall be defrayed  
2 from the assets thereof, including but not limited to any necessary  
3 fees or other expenses incurred through the office of the county  
4 clerk. Compensation to liquidating agents and employees must not be  
5 in excess of amounts which such individuals would be entitled to in  
6 their regular employment or for like services rendered within the  
7 area of the insolvent bank, and in no event shall a liquidating  
8 agent be paid a monthly salary or wage from the assets of the bank  
9 in excess of the amount of the monthly salary of the highest-paid  
10 official of the insolvent bank. The attorney's fee allowed to an  
11 attorney representing the liquidating agent shall not exceed the  
12 amount for like services in regular employment of an attorney in the  
13 area of the bank.

14 SECTION 9. AMENDATORY 6 O.S. 2001, Section 1205, is  
15 amended to read as follows:

16 Section 1205. A. Liquidation by F.D.I.C. The Federal Deposit  
17 Insurance Corporation is hereby authorized and empowered to be and  
18 act without bond as liquidating agent of any banking institution  
19 closed by the State Banking Commissioner, the deposits in which are  
20 to any extent insured by the Corporation.

21 B. Commissioner may tender to F.D.I.C. as liquidator. The  
22 Commissioner may in the event of such closing upon order of the

1 Board tender to the Corporation the appointment as liquidator of  
2 such banking institution.

3 C. Appointment of F.D.I.C. as liquidator - Acceptance. Upon  
4 being notified in writing of the acceptance of such an appointment,  
5 the Commissioner shall forthwith file in the office of the clerk and  
6 recorder in the county in which the bank is situated a certificate  
7 evidencing the appointment of the Federal Deposit Insurance  
8 Corporation. Upon the filing of such certificate the possession of  
9 all the assets, business and property of such bank of every kind and  
10 nature wheresoever situated shall be deemed transferred from such  
11 bank and the Commissioner to the Federal Deposit Insurance  
12 Corporation including any securities pledged by the bank to the  
13 Commissioner pursuant to Section 1004 of this title. Without the  
14 execution of any instruments of conveyance, assignment, transfer or  
15 endorsement, the title to all such assets and property shall be  
16 vested in the Federal Deposit Insurance Corporation and the  
17 Commissioner shall be forever thereafter relieved from any and all  
18 responsibility and liability in respect to the possession and  
19 liquidation of such bank.

20 D. Powers of F.D.I.C. as liquidator. If the Corporation  
21 accepts the appointment, it shall have and possess all the powers  
22 and privileges provided by the laws of this state with respect to  
23 the liquidation of a bank and with respect to its depositors and

1 other creditors and shall proceed in liquidation under this title as  
2 if it were the Commissioner and shall act in the Commissioner's  
3 stead and be substituted therefor in all actions brought pursuant to  
4 Section 1018 of this title.

5 E. Priority of Claims for F.D.I.C. If the Corporation serves  
6 as the liquidating agent of any national bank the principal office  
7 of which is located in Oklahoma, it shall be bound by the priority  
8 of claims established in subsection K of Section 1204 of this title.

9 F. Individual liability of directors. Among its other powers,  
10 the Federal Deposit Insurance Corporation, in the performance of its  
11 powers and duties as such liquidator, shall have the right and  
12 power, upon the order of a court of record of competent  
13 jurisdiction, to enforce the individual liability of the directors  
14 of any such banking institution.

15 SECTION 10. 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 3-16-10 - DO PASS,  
20 As Amended.