STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1430 By: Newberry

COMMITTEE SUBSTITUTE

An Act relating to banking; amending 6 O.S. 2011, Sections 414, 714, and Sections 1512, 1513 and 2104, as amended by Sections 6, 7 and 10, Chapter 62, O.S.L. 2013 (6 O.S. Supp. 2015, Sections 1512, 1513, and 2104), which relate to acquisition of real estate, directors, definitions, money transmitter license, and exempt transactions; requiring evaluation to support certain value of property; removing requirement to keep certain appraisals; modifying condition for certain board of directors meetings; providing board meeting minutes upon request; construing certain provisions; adding definition; modifying language; requiring return of certain document upon certain condition; directing list of agents or delegates be provided to Commissioner; modifying amount of certain fee; deleting requirement for separate license for each location; allowing a license certificate without termination date; requiring renewal by certain date each year; authorizing amount for security of certain services by rule; setting minimum amount of security; exempting certain transactions for certain licensees; requiring certain bond for certain transmission activities; and declaring an emergency.

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

SECTION 1. AMENDATORY 6 O.S. 2011, Section 414, is amended to read as follows:

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

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

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

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

5. A state bank may purchase or construct a municipal building, such as a school building, or other similar public facility and, as holder of legal title, lease the same to a municipality or other public authority having resources sufficient to make payment of all rentals as they become due. The lease agreement shall provide that

upon its expiration the lessee will become owner of the building or facility.

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

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

2. All such real estate shall be accounted for individually at the lower of the recorded investment in the loan satisfied or its fair market value on the date of the transfer. The fair market value of the real estate must be supported by an appropriate evaluation of real property collateral that is consistent with safe and sound banking practices. The recorded value of the property must be updated from time to time to reflect current market conditions as well as any other factors that may affect the fair market value.

3. The recorded investment in the loan satisfied is the unpaid balance of the loan, increased by accrued and uncollected interest, unamortized premium, and loan acquisition costs, if any, and

decreased by previous direct write down, finance charges and unamortized discount, if any.

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

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

E. 1. Without the written approval of the Commissioner, real estate acquired in the cases contemplated in subsections B and D of this section may be held for an initial holding period of no longer than five (5) years from the date of acquisition. However, a bank may apply, during the first two (2) years in which the real estate is acquired by the bank, for approval by the Commissioner to retain such real estate for the purposes described in paragraph 6 of subsection A of this section. In the case of approval by the Commissioner, the rules of this subsection shall not apply to such property. In the absence of such application, or if the application is denied by the Commissioner, the rules of this subsection shall apply to the retention of the real estate by the bank.

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

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

4. ~~Banks or trust companies shall be required to keep current appraisals on file to substantiate their other real-estate-owned property book values. A full appraisal or a supplement which updates a full appraisal, not more than twelve (12) months old, shall be considered current for purposes of this paragraph. Provided, however, if a bank has begun writing down the book value of the property pursuant to paragraph 3 of this subsection, the bank need not update an appraisal if the book value of the property is fifty percent (50%) or less than the bank's most recent appraised value.~~

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

~~6.~~ 5. At the conclusion of the additional extension period, real estate must be disposed of or, if approved by the Commissioner, must be transferred to a subsidiary company of the bank.

~~7.~~ 6. For purposes of this section, ownership interests in oil, gas and other subsurface mineral rights other than mere leasehold interests shall be considered real estate. However, notwithstanding the holding limitation of this section or any other provision contained herein, any bank or trust company which on October 15, 1982, held, directly or indirectly, any oil, gas and other subsurface mineral rights, other than mere leasehold interests, that since December 31, 1979, had not been valued on the books of such bank or trust company for more than a nominal amount, may continue to hold such subsurface rights or interest without limitation.

F. Any bank or trust company organized under the laws of this state may invest its funds in the stocks, bonds, debentures or other such obligations of any corporation holding the premises of such bank or trust company, and may make loans to or upon the security of any such corporation, but the aggregate of all such investments and loans together with the investments provided for in subsection A of this section shall not exceed its capital. This limitation may be exceeded upon the written approval of the Commissioner.

G. Every conveyance of real estate and every lease thereof made by a bank or trust company shall have the name of such bank or trust company subscribed thereto, either by an attorney-in-fact,

president, vice-president, chairperson or vice-chairperson of the board of directors of such corporation.

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

SECTION 2. AMENDATORY 6 O.S. 2011, Section 714, is amended to read as follows:

Section 714. A. The board of directors of a bank shall meet at least once every month and the board of directors of a trust company shall meet at least once every quarter. <u>However, the Commissioner may prescribe circumstances, which if satisfied by a bank, will permit the bank's board of directors to meet no less often than once every two months. If the Commissioner permits a board of directors to meet less often than monthly, any requirement in this title or in the rules of the Oklahoma Administrative Code for monthly reviews by the board shall be interpreted to mean review at each meeting of the board of directors.</u> Board members of the bank may participate in such meetings by teleconference, video conference, or other means by which any board member not physically present at a meeting location may vote and otherwise participate in the meeting and be aware of all communication and business being transacted at the meeting at the same time as it occurs. The State Banking Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The

board shall keep minutes of each meeting, including a record of attendance and a record of all votes of the directors that would be pertinent to the business of the bank, to any officer, or to any stockholder. A copy of the minutes of each meeting of the board of directors shall be furnished to the Commissioner ~~within forty (40) days after the board meeting~~ upon request. A copy shall be signed by the chairman of the board or the secretary to the board and retained at the bank. The minutes may be transmitted to the Commissioner electronically.

B. The board of directors of each bank shall review at least monthly and the board of directors of each trust company shall review at least quarterly written reports prepared by the president or other officer of the corporation setting forth such transactions occurring during the calendar month or quarter, as appropriate, preceding the meeting as the Commissioner shall require by appropriate regulations.

C. The board of directors of every bank and trust company shall examine, at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the corporation including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner may require. However, upon request by a bank or trust company, the Commissioner may allow the examination called for by this subsection to occur at intervals less frequent than called for

in this subsection or may condition the requirement of such examination upon the occurrence of some event. A report of the examination shall be submitted promptly to the Commissioner and shall embody such information as the Commissioner requires. The board of directors may provide that such examination shall be conducted by a committee of not less than three directors, by certified public accountants, or by independent auditors responsible only to the board of directors. Such examination shall be made when practicable without the assistance of the executive officers of the bank or trust company. Such report of examination shall be reviewed by the directors at the next meeting of the board of directors.

D. A bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No investment shall be made,

retained or disposed of without the approval of a committee to which the bank has delegated investment or review responsibility. The committee, in making investment decisions, shall be subject to the provisions of the Oklahoma Uniform Prudent Investor Act. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions.

E. Every official communication directed by the Commissioner or any examiner to any bank or trust company or to any officer thereof, relating to an investigation or examination conducted by the Department or containing suggestions or recommendations as to the conduct of the business of the bank or trust company, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in such form and in such manner as may be prescribed and directed by the Commissioner. No officer of any bank or trust company shall fail to comply with this subsection.

SECTION 3. AMENDATORY 6 O.S. 2011, Section 1512, as amended by Section 6, Chapter 62, O.S.L. 2013 (6 O.S. Supp. 2015, Section 1512), is amended to read as follows:

Section 1512. As used in this act:

1. "Board" means the Banking Board;

2. "Commissioner" means the State Banking Commissioner;

3. "Currency" or "funds" means the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country;

4. "Department" means the Oklahoma State Banking Department;

5. "Licensee" means a person granted a license by the Commissioner to engage in business as a money transmitter;

6. "Money services business" includes each agent, agency, branch, or office within the State of Oklahoma of any person doing business, whether or not on a regular basis or as an organized business concern, as a money transmitter or in one or more of the capacities otherwise identified and defined by the Board. The term "money services business" shall not include a "bank" as that term is defined in Title 31, Code of Federal Regulations, Chapter X, nor shall it include a person registered with and regulated or examined by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

~~6.~~ 7. "Money transmitter" means any person who engages in the business of accepting currency or funds denominated in currency, and transmits the currency or funds or the value of the currency or

funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System or both, or an electronic funds transfer network;

~~7.~~ 8. "Money transmitter equipment" means any type of terminal, machine, computer software, access to any network, or any other type of tangible or intangible apparatus or system, or any combination thereof, that may be used by a money transmitter to initiate a transmittal of currency;

~~8.~~ 9. "Person" includes an individual, corporation, partnership, limited partnership, limited liability company, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, Indian tribe, and all entities cognizable as legal personalities; and

~~9.~~ 10. "Supplier" means any person that utilizes, designates or otherwise authorizes another person, whether or not designated as an agent, to perform services of a money transmitter, or who provides money transmitter equipment to a person in connection therewith.

SECTION 4. AMENDATORY 6 O.S. 2011, Section 1513, as amended by Section 7, Chapter 62, O.S.L. 2013 (6 O.S. Supp. 2015, Section 1513), is amended to read as follows:

Section 1513. A. No person shall engage in the money services business in this state without first ~~filing a registration application on a form prescribed by the Commissioner and~~ securing a

license to do so from the Commissioner. Any person acting as agent or authorized delegate for any licensee under the Oklahoma Financial Transaction Reporting Act shall prominently display a copy of the principal's license certificate at each place of business of the agent or authorized delegate where money transmitter services are offered. It shall be the responsibility of the licensee to provide ~~copies~~ a copy of ~~the most current~~ the license certificate to ~~the~~ each agent or authorized delegate for display and to obtain the return of such copy if an agent or authorized delegate is no longer authorized to conduct business on behalf of a licensee.

B. Upon the effective date of this act, a supplier shall provide to the Commissioner, on a form prescribed by the Commissioner, a list of each person to whom money transmitter equipment has been provided. A licensee shall provide the Commissioner a list of each person acting in Oklahoma as agent or authorized delegate on behalf of the licensee. The list shall be updated each calendar quarter and shall be provided to the Commissioner within thirty (30) days after the close of the calendar quarter. The updated list shall reflect any additional persons to whom money transmitter equipment has been provided since the last reporting period. The list need only identify those persons for whom the supplier has an address in this state or who the supplier reasonably believes to be operating in this state.

C. ~~Unless a different fee is otherwise promulgated by the Board, each registration~~ Each application filed ~~under this section~~ for issuance or renewal of a money transmitter license must be accompanied by a fee in an amount ~~equal to that required under subsection B of Section 104 of Title 6 of the Oklahoma Statutes. Any person conducting a money services business at more than one location shall secure a separate license for each location~~ prescribed by the board. Notwithstanding any other deadlines or terms prescribed by the board, a money transmitter license certificate may be issued without a termination date; provided, however, the license certificate must be renewed no later than December 31 each calendar year.

D. Any person who violates the provisions of this section shall, upon conviction, be guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars ($1,000.00), or by imprisonment in the county jail for not more than one (1) year, or by both such fine and imprisonment. Each day that any violation of this section occurs or continues shall constitute a separate offense and shall be punishable as a separate violation.

E. Any licensee providing money transmission services to Oklahoma residents primarily through electronic means must maintain security in the amount prescribed by rule of the board but not less than Two Hundred Thousand Dollars ($200,000.00).

F. All fees collected under this section shall be deposited in the Department revolving fund pursuant to Section 211.1 of this title.

SECTION 5. AMENDATORY 6 O.S. 2011, Section 2104, as amended by Section 10, Chapter 62, O.S.L. 2013 (6 O.S. Supp. 2015, Section 2104), is amended to read as follows:

Section 2104. A. Nothing in the Sale of Checks Act shall apply to the receipt of money by any incorporated telegraph company at any agency or office of the company for immediate transmission by telegraph, or to the receipt of money for the purpose of transmitting or transferring it to foreign countries.

B. Nothing in ~~this act~~ the Sale of Checks Act shall apply to the sale or issuance of checks by governmental departments. No federally insured financial institutions authorized to do business in this state, including banks, savings and loan associations, and credit unions, whether the federally insured financial institutions are organized under the laws of this state or of the United States, shall be subject to this act where the institution is selling or issuing checks drawn only on itself or on another federally insured financial institution or representing insured deposits held at the institution.

C. Nothing in this act shall apply to a company that maintains a license under the Oklahoma Financial Transaction Reporting Act. Provided, a person selling checks that are exempt pursuant to this

subsection must maintain a bond covering its money transmission activities and sale of checks activities in an amount not less than the maximum required pursuant to the rules of the board.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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