

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 3697

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to banking; amending 6 O.S. 2011,
8 Section 1109, which relates to sale or purchase of
9 bank and savings association assets; limiting sale of
10 assets to certain banks and savings associations; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 6 O.S. 2011, Section 1109, is
14 amended to read as follows:

15 Section 1109. A. 1. Any bank or savings association may sell
16 to any other bank or savings association the deposits of which are
17 insured by the Federal Deposit Insurance Corporation, all, or
18 substantially all, of the selling institution's assets and business;
19 or all, or substantially all, of the assets and business of any
20 department or branch of the selling institution.

21 2. Any trust company, bank, or savings association may sell to
22 any other trust company, bank, or savings association all, or
23 substantially all, of the assets and trust business of such trust
24 company, bank, or savings association, or all, or substantially all,

1 of the assets and business of any department or branch of the
2 selling trust company, bank, or savings association.

3 B. 1. Any bank or savings association may, upon assuming the
4 liabilities relating thereto, purchase all, or substantially all, of
5 the assets and business of another bank or savings association, or
6 all, or substantially all, of the assets and business of any
7 department or branch of another bank or savings association.

8 2. Any trust company, bank, or savings association may, subject
9 to the requirements of subsection E of this section, purchase all,
10 or substantially all, of the assets and business of another trust
11 company, bank, or savings association, or all, or substantially all,
12 of the assets and business of any department or branch of another
13 trust company, bank, or savings association. If the purchasing or
14 selling institution is an out-of-state institution, the agreement of
15 purchase and sale shall be authorized and approved by the board of
16 directors of the institution in accordance with such laws as shall
17 be applicable.

18 C. The agreement of purchase and sale shall be authorized and
19 approved by the boards of directors of the purchasing and selling
20 banks, trust companies, or savings associations. If the agreement
21 of purchase and sale includes the transfer of a majority of the
22 assets or the transfer of a majority of the deposits of a selling
23 institution, the agreement of purchase and sale shall be authorized
24 and approved by the vote of a majority of the outstanding shares of

1 the selling institution at a meeting called for the purpose in like
2 manner as meetings to approve mergers are called pursuant to Section
3 1104 of this title and the stockholders shall be entitled to dissent
4 in the same manner as provided in Section 1104 of this title. If
5 the agreement of purchase and sale includes the purchase of assets
6 which are greater than fifty percent (50%) of the purchasing
7 institution's assets prior to the purchase, or includes the
8 assumption of deposits which are greater than fifty percent (50%) of
9 the purchasing institution's deposits prior to the purchase, the
10 agreement of purchase and sale shall be authorized and approved by
11 the vote of a majority of the outstanding shares of the purchasing
12 institution at a meeting called for the purpose in like manner as
13 meetings to approve mergers are called pursuant to Section 1104 of
14 this title and the stockholders shall be entitled to dissent in the
15 same manner as provided in Section 1104 of this title. If the
16 stockholders of an institution are hereby entitled to dissent, they
17 shall receive notice of their right to dissent along with notice of
18 the stockholders' meeting which is to consider the agreement of
19 purchase and sale, in the same manner as provided in Section 1104 of
20 this title with respect to mergers. Copies of the agreement of
21 purchase and sale shall be filed with and subject to the approval of
22 the State Banking Commissioner, together with a fee for review of
23 the transaction as required by rule of the Banking Board, and shall
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1 be accompanied by evidence of such stockholders' approval thereof in
2 like manner as agreements of merger are filed.

3 D. After the approval required by subsection C of this section
4 is given by the stockholders, a notice of such purchase and sale
5 shall be published once a week for two (2) successive weeks in a
6 newspaper of general circulation in the county in which the assets
7 of the selling bank, trust company, or savings association are
8 located if the entity is an Oklahoma institution, and if not, shall
9 be published as required by the law of the state where the selling
10 institution is located. Proof of such publication shall be filed
11 with the Oklahoma State Banking Department. The Commissioner may
12 permit the requirement for publication of notice to be satisfied
13 after the purchase and sale becomes effective if the Commissioner
14 determines that:

15 1. The selling bank, trust company, or savings association is
16 solvent, but either is close to insolvency or is experiencing a run
17 on deposits;

18 2. The terms of the agreement of purchase and sale are
19 essentially fair to the selling bank, trust company, or savings
20 association; and

21 3. The selling bank, trust company, or savings association will
22 remain solvent after the purchase and sale.

23 E. Any deposit account or certificate of deposit which is
24 unconditionally assumed by the purchasing institution pursuant to an

1 agreement approved by the Commissioner, and which, after a
2 depositor's preexisting accounts at the purchasing institution are
3 added to the accounts assumed from the selling institution, is fully
4 covered by the FDIC insurance limits at the purchasing institution,
5 shall cease to be an obligation of the selling institution after the
6 purchase and sale becomes effective. Notwithstanding any term of
7 the purchase and sale agreement or of the contract of deposit, a
8 deposit account, certificate of deposit or other creditor's account
9 shall be deemed to be only conditionally assumed by the purchasing
10 institution if:

11 1. The amount of the preexisting accounts of the depositor at
12 the purchasing institution, together with the accounts of such
13 depositor which are assumed from the selling institution, would
14 exceed the FDIC insurance limits of the purchasing institution; or

15 2. The claims of a depositor or other creditor against a
16 selling institution and the loans of the depositor or other creditor
17 from the selling institution are not simultaneously assumed by the
18 purchasing institution so as to preserve a right of set-off. Any
19 depositor or creditor of the selling institution whose business is
20 conditionally sold has the right, after such sale:

21 a. upon payment of any indebtedness owing by the
22 depositor or creditor to the selling institution, to
23 withdraw the deposit of the depositor or creditor in
24 full from the selling institution on demand, or

1 b. to exercise the right of set-off of such depositor or
2 creditor.

3 3. Notwithstanding the preceding language of paragraphs 1 and 2
4 of this subsection, after a person deals with the purchasing
5 institution with knowledge of the purchase, such person's deposit or
6 account shall no longer be deemed to be only conditionally assumed.

7 F. 1. The agreement of sale may provide for the transfer to
8 the purchasing institution of all fiduciary positions held by the
9 selling institution. The purchasing institution shall enjoy all
10 such positions and all rights, property, franchises, and interests,
11 including any and all fiduciary positions to and for which the
12 selling institution may have been appointed, nominated, or
13 designated by any will, agreement, conveyance, or otherwise, whether
14 or not such position is in effect at the time of the substitution,
15 in the same manner and to the same extent as all such positions were
16 held and enjoyed by the selling institution.

17 2. The selling and purchasing institutions shall jointly file a
18 petition with the district court of the county in which the main
19 office of the selling institution is situated requesting that the
20 purchasing institution be substituted, except as may be expressly
21 excluded in such petition, in every fiduciary position of the
22 selling institution. Such petition need not designate the fiduciary
23 positions in which the requested substitution is to be made.

1 3. Upon the filing of such petition, the court shall enter an
2 order setting the petition for hearing and shall direct that notice
3 of the hearing be given in the manner provided in this subsection or
4 in the manner required by the law of the state where the selling
5 institution is located if it is an out-of-state institution.

6 4. A copy of the order provided for in paragraph 3 of this
7 subsection shall be published once a week for two (2) successive
8 weeks in a newspaper of general circulation to be designated by the
9 court and published in the county in which the petition was filed.
10 If there is no newspaper published in such county, publication shall
11 be made in a newspaper of general circulation in the State of
12 Oklahoma designated by the court. Proof of publication shall be
13 made in the same manner as proof of publication of summons is made.

14 5. The filing of such petition and the making and entering of
15 such order and the giving of notice of such order as required by
16 this subsection gives the court full jurisdiction of the trusts and
17 all parties interested therein. The court having jurisdiction in
18 such matter shall require the selling institution to mail, by
19 registered mail postage prepaid, a copy of such order to each living
20 trustor of all private trusts in which such institution is trustee
21 or to the then directly participating beneficiaries of all private
22 trusts in which there is no living trustor. Such notice shall be
23 mailed to the last-known address of each such trustor or
24 participating beneficiary as shown by or as may be ascertained by

1 reasonably diligent efforts from the records of such institution.

2 Proof of mailing shall be in such form as the court shall require.

3 6. The district court shall enter a single order substituting
4 the purchasing institution in every fiduciary position to and for
5 which the selling institution may have been appointed, nominated, or
6 designated by any will, agreement, conveyance, or otherwise, whether
7 or not such position is in effect at the time of the substitution,
8 except as may be otherwise specified in such order, upon its finding
9 as follows:

10 a. notice of hearing the petition has been given as
11 required by this subsection,

12 b. the purchasing institution is duly authorized to
13 exercise trust and fiduciary powers in Oklahoma,

14 c. the selling and purchasing institutions are not
15 directly or indirectly owned or controlled by the same
16 holding company or multibank holding company, or, if
17 the selling and purchasing institutions are directly
18 or indirectly owned or controlled by the same holding
19 company or multibank holding company, then the
20 purchasing institution shall assume all trust
21 liabilities of the selling institution, and

22 d. such sale or transfer was not made in order to avoid
23 any liability incurred by the selling institution.

1 7. Upon entry of such order, the purchasing institution shall,
2 without further act, be substituted in every such fiduciary
3 position, and such substitution may be evidenced by filing a
4 certified copy of the order with the clerk of any district court in
5 this state.

6 8. Notwithstanding the foregoing provisions of this subsection,
7 the provisions of the instrument creating each fiduciary position
8 subject to the agreement of sale shall control such succession, if
9 such instrument so provides.

10 G. Except as provided for in subsection E of this section, no
11 right against or obligation of the selling institution in respect of
12 the assets or business sold shall be released or impaired by the
13 sale until one (1) year from the last date of publication of the
14 notice pursuant to subsection D or F of this section, but after the
15 expiration of such year no action can be brought against the selling
16 institution on account of any deposit, obligation, trust or asset
17 transferred to or liability assumed by the purchasing institution.

18 H. This section shall be applicable to any bank, trust company,
19 or savings association, regardless of whether its main office or
20 charter is located within this state or elsewhere.

21 SECTION 2. This act shall become effective November 1, 2020.

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23 57-2-9654 JBH 01/08/20
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