An Act

ENROLLED HOUSE
BILL NO. 2779

By: Ownbey of the House

and

Stanislawski of the Senate

An Act relating to banks and trust companies; amending 6 O.S. 2001, Sections 201, as last amended by Section 1, Chapter 3, O.S.L. 2009, 209, as amended by Section 5, Chapter 48, O.S.L. 2005 and 212 (6 O.S. Supp. 2009, Sections 201 and 209), which relate to the Banking Department; modifying qualifications for Deputy Commissioner; prohibiting disclosure of examinations and reports to third parties; requiring annual report to be published; amending 6 O.S. 2001, Sections 306.1, as last amended by Section 4, Chapter 275, O.S.L. 2008, 306.2 and 307.1, as amended by Section 7, Chapter 67, O.S.L. 2002 (6 O.S. Supp. 2009, Sections 306.1 and 307.1), which relate to organization; modifying certain actions of Commissioner; amending 6 O.S. 2001, Section 414, as last amended by Section 12, Chapter 48, O.S.L. 2005 (6 O.S. Supp. 2009, Section 414), which relates to powers; allowing exception for appraisal requirement; amending 6 O.S. 2001, Sections 1202 and 1205, which relate to liquidation, dissolution, and reorganization; providing procedure for liquidation when notice of possession is not filed in district court; expanding scope of immunity of Commissioner upon appointment of Federal Deposit Insurance Corporation as liquidator; and declaring an 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 3, O.S.L. 2009 (6 O.S. Supp. 2009, 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 have had ten (10) years' experience as a bank officer or employee, or five (5) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner. The Commissioner shall be appointed for a term of four (4) years. The Commissioner shall continue to serve until a successor is duly appointed, confirmed and qualified. The Commissioner may be removed by the Governor for cause after notice and hearing. A successor to a Commissioner who dies, resigns or is removed shall be appointed in the same manner as provided in this section.

C. 1. The Commissioner shall appoint a Deputy Commissioner who may also serve as secretary to the Board hereinafter created. The Deputy 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 (30) years old and shall have had five (5) years' experience as a bank officer or employee, or three (3) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner, Assistant Deputy Commissioner, or other Department employee. If the office of the Commissioner is vacant or if the Commissioner is absent or unable to act, the Deputy Commissioner shall be the acting Commissioner.

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

3. The Attorney General is hereby authorized to appoint an Assistant Attorney General, in addition to those now provided by

law, to be assigned to the Department. The Assistant Attorney General shall perform such additional duties as may be assigned by the Attorney General, and shall otherwise be subject to all provisions of the statutes relating to Assistant Attorneys General. The Banking Department is authorized to pay all or any part of the salary of the Assistant Attorney General.

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

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

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

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

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

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

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

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

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

Section 209. A. 1. The State Banking Commissioner shall, at least every eighteen (18) months or as often as the Commissioner deems advisable, examine every bank and trust company, and for the purpose of making such examinations and special examinations, shall have full access to all books, papers, securities, records and other sources of information under the control of banks and trust companies. Upon the conclusion of the examination, the Commissioner may make and file in the office of the Commissioner a report in detail disclosing the results of such examination or may, on conditions prescribed by the Commissioner, prepare a summary memorandum regarding the results of such examination, and shall, upon request by the bank, mail a copy of such report or memorandum to the bank or trust company examined. However, the Commissioner may accept, in lieu of any three consecutive bank examinations, the examination that may have been made of the bank or trust company within a reasonable period by the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, or the Office of Thrift Supervision provided a copy of the examination, report, or other document prepared as a result of the examination is furnished to the Commissioner.

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

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

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

B. Every bank shall make four reports each year and more often if called upon by the Commissioner and according to the form which may be prescribed by the Commissioner, and every trust company shall make two reports each year and more often if called upon by the Commissioner and according to the form which may be prescribed by the Commissioner. They must be verified by the oath or affirmation of the president, cashier or secretary of such bank or trust company, attested by the signatures of at least two of the directors, and shall be retained and made available for inspection upon request of the Commissioner or designated representatives of the Commissioner. Each such report shall exhibit, in detail and under appropriate headings, the assets and liabilities of the corporation at the close of business on any last day by the Commissioner specified, and shall be transmitted to the Commissioner within thirty (30) calendar days after the call date, and may be published at the expense of the bank or trust company in the same form in which it is made to the Commissioner. The Commissioner shall also have the power to call for special reports from any bank or trust company whenever, in the judgment of the Commissioner, the same are necessary in order to gain a full and complete knowledge of its condition. However, the reports authorized and required by this

section, to be called for by the Commissioner, shall relate to a date prior to the date of such call to be specified therein. Additionally, the Commissioner may accept, in lieu of the reports referred to in this section, reports made by banks that are members of the Federal Reserve System on forms provided by the Federal Reserve System or reports submitted by banks to the Federal Deposit Insurance Corporation.

C. Every bank or trust company which fails to make and transmit any report required within the discretion of the Commissioner, under the Oklahoma Banking Code, shall be subject to a penalty not to exceed Fifty Dollars ($50.00) for each day, after the period respectively therein mentioned, that the bank or trust company delays to make and transmit its report. Whenever any bank or trust delays or refuses to pay the penalty herein imposed for a failure to make and transmit a report, the Commissioner is hereby authorized to maintain an action in the name of the state against the delinquent bank or trust company for the recovery of such penalty, and all sums collected by such action shall be paid into the Oklahoma State Banking Department revolving fund pursuant to Section 211.1 of this title.

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

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

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

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

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

Section 306.1 A. Once the Commissioner ~~is satisfied that the organizers have substantially complied with the requirements of Section 305 of this title and an organizational expense fund in a minimum amount approved by the Commissioner has been fully funded, the Commissioner shall accept the application for filing and shall notify the organizers of the acceptance. Prior to acceptance by the Commissioner, an applicant shall have one opportunity to correct deficiencies in an application. Deficiencies that are not corrected adequately when the application is resubmitted may cause the application to be considered withdrawn or disapproved~~ determines that a bank or savings association is in danger of failing and all or part of the deposit liability of such bank or savings association is to be assumed by a bank being organized for that purpose, the Board at a meeting closed to the public may approve of the organization of the acquiring bank and the Commissioner may grant a certificate of authority to the acquiring bank, and shall not be bound by the provisions, restrictions, and requirements contained in Article III of this title. The Commissioner is further empowered in such event to grant authority to organize a state savings association and issue a certificate of authority without notice or hearing and without action of the Board.

B. ~~Within ten (10) days after~~ If the Commissioner has ~~accepted an application for filing, the applicant shall publish notice of the filing in a legal newspaper of general circulation in the city, town, or county in which the proposed bank or trust company is to be located. The notice shall be published on the same day for two (2) consecutive weeks and shall contain a statement that an application has been submitted, the names of the organizers, the name and location of the proposed bank or trust company and the date on which the application was accepted for filing~~ determined that a bank is in danger of failing and the Commissioner must take possession of the bank pursuant to Article XII of this title, the Board at a meeting

closed to the public may approve of the actions of the Commissioner and order the Commissioner to tender to the Federal Deposit Insurance Corporation the appointment as liquidator of the bank.

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

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

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

Section 306.2 A. In the event the Commissioner determines that ~~a bank or savings association is in imminent danger of failing and the deposit liability of such bank or savings association is to be assumed by a state bank or state savings association being organized or establishing a branch for that purpose, the Commissioner, or in the case of a state bank upon approval of the Board at a meeting closed to the public, is empowered to grant authority to organize a state bank and issue a certificate of authority, or to grant authority to establish a branch and issue a certificate to maintain and operate a branch, without notice or hearing, and shall not be bound by the provisions, restrictions and requirements contained in Sections 301 through 306.1 of this title and Sections 307.1 through 313 of this title. The Commissioner is further empowered in such event to grant authority to organize a state savings association and issue a certificate of authority, or to grant authority to establish a branch and issue a certificate to maintain and operate a branch, without notice or hearing and without action of the Board~~ the organizers have substantially complied with the requirements of Section 305 of this title and an organizational expense fund in a minimum amount approved by the Commissioner has been fully funded, the Commissioner shall accept the application for filing and shall notify the organizers of the acceptance. Prior to acceptance by the Commissioner, an applicant shall have one opportunity to correct deficiencies in an application. Deficiencies that are not corrected adequately when the application is resubmitted may cause the application to be considered withdrawn or disapproved.

B. Within ten (10) days after the Commissioner has accepted an application for filing, the applicant shall publish notice of such acceptance in a legal newspaper of general circulation in the city, town, or county in which the proposed bank or trust company is to be located. The notice shall be published on the same day for two (2) consecutive weeks and shall contain a statement that an application has been submitted, the names of the organizers, the name and location of the proposed bank or trust company and the date on which the application was accepted for filing. The applicant shall promptly furnish the Commissioner an affidavit evidencing such publication.

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

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

B. Comments or objections. Within twenty-one (21) days after the first notice by publication as described in Section ~~306.1~~ 306.2 of this title, any interested person may submit to the Commissioner written comments or objections to organization of the proposed bank, or a request for an opportunity to be heard by the Commissioner at a hearing held prior to consideration by the Board of the application for authority to organize. Any request for opportunity to be heard shall set forth reasons justifying the time and expense entailed by such hearing before the Commissioner. In the sole discretion of the Commissioner, the Commissioner may decide to permit such a hearing or may refuse the request for hearing. If the Commissioner refuses the request for hearing, the interested person may be heard at the hearing held by the Board to consider the application. In the absence of a request, the Commissioner may order a hearing to be held before the Commissioner if the Commissioner determines that it is in the public interest.

SECTION 7. AMENDATORY 6 O.S. 2001, Section 414, as last amended by Section 12, Chapter 48, O.S.L. 2005 (6 O.S. Supp. 2009, 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.

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

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

1. That it is insolvent;

2. The bank's capital is impaired, and has not been corrected as provided in Section 220 of this title, or is otherwise in an unsound condition;

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

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

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

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

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

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

3. When the Commissioner is in possession and while the Commissioner's possession continues there shall be a postponement until six (6) months after such taking, of the date upon which any period of limitation fixed by statute or agreement would otherwise expire on a claim or right of action of the bank, or upon which a review must be taken or a pleading or other document must be filed by the bank in any pending action or proceeding.

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

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

b. The board of directors, as authorized by the stockholders, shall represent the stockholders in the district court in which the notice of possession has

been filed by the Commissioner, as to all matters affecting the bank.

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

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

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

2. If the Commissioner shall determine to liquidate the bank, the Commissioner shall give such notice of the Commissioner's determination to the directors, stockholders, depositors and creditors as the Board may prescribe. Such notice shall be by restricted delivery to the directors and stockholders at their last-known address as shown on the records of the bank and notice to the depositors and creditors shall be published in a legal newspaper published in the city or town where such bank is located, or if there be no legal newspaper published in such city or town then in a legal newspaper having the greatest paid circulation within such city or town. Any objection to such determination by a person directly affected shall be filed with the Board within ten (10) days after such notice is mailed or published. Unless within ten (10) days thereafter the Board issues an order staying the liquidation or unless the Board directs the Commissioner to tender to the Federal Deposit Insurance Corporation the appointment as liquidator under this section, the Commissioner shall proceed to liquidate the institution, upon first providing a bond executed by some surety company authorized to do business in this state, running to the people of the State of Oklahoma, which meets with the approval of the Board, for the faithful discharge of the duties of the

Commissioner, in connection with such liquidation and the accounting for all monies coming into the hands of the Commissioner. The cost of such bond shall be paid from the assets of the bank. Suit may be maintained on such bond by any person injured by a breach of conditions thereof.

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

4. If the Commissioner determines to reorganize the bank or if the Board, after staying its liquidation, orders such reorganization, the Commissioner, after according a hearing to all interested persons, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive payment of the claim of the depositor or creditor in full under the plan, together with notice that, unless within fifteen (15) days the plan is disapproved in writing by persons holding one-third (1/3) or more of the aggregate amount of such claims, the Commissioner will proceed to effect the reorganization. A department, agency, or political subdivision of this state holding a claim which will not be paid in full is authorized to participate as any other creditor.

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

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

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

In the proceeding with the immediate liquidation of the bank as aforesaid, the Commissioner, in order to facilitate the assumption of the deposit liabilities of the closed bank by another bank, may borrow moneys from the Federal Deposit Insurance Corporation and pledge some or all of the assets of the closed bank as security for such borrowing or the Commissioner may sell some or all of the assets of the closed bank to the Federal Deposit Insurance Corporation. When notice of possession has not been filed in the district court, the provisions of this paragraph are satisfied by an order of the Board approving the actions of the Commissioner and an order of the Board directing the appointment of the Federal Deposit Insurance Corporation as liquidator.

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

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

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

1. No judgment, lien or attachment shall be executed upon any asset of the bank while it is in the possession of the Commissioner.

Upon the election of the Commissioner in connection with a liquidation or reorganization:

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

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

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

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

F. Commissioner's expenses - Payable out of bank's assets. All necessary and reasonable expenses of the Commissioner's possession of a bank and of its reorganization or liquidation shall be defrayed from the assets thereof, including but not limited to any necessary fees or other expenses incurred through the office of the county clerk. Compensation to liquidating agents and employees must not be in excess of amounts which such individuals would be entitled to in their regular employment or for like services rendered within the area of the insolvent bank, and in no event shall a liquidating agent be paid a monthly salary or wage from the assets of the bank in excess of the amount of the monthly salary of the highest-paid official of the insolvent bank. The attorney's fee allowed to an attorney representing the liquidating agent shall not exceed the amount for like services in regular employment of an attorney in the area of the bank.

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

Section 1205. A. Liquidation by F.D.I.C. The Federal Deposit Insurance Corporation is hereby authorized and empowered to be and

act without bond as liquidating agent of any banking institution closed by the State Banking Commissioner, the deposits in which are to any extent insured by the Corporation.

B. Commissioner may tender to F.D.I.C. as liquidator. The Commissioner may in the event of such closing upon order of the Board tender to the Corporation the appointment as liquidator of such banking institution.

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

D. Powers of F.D.I.C. as liquidator. If the Corporation accepts the appointment, it shall have and possess all the powers and privileges provided by the laws of this state with respect to the liquidation of a bank and with respect to its depositors and other creditors and shall proceed in liquidation under this title as if it were the Commissioner and shall act in the Commissioner's stead and be substituted therefor in all actions brought pursuant to Section 1018 of this title.

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

F. Individual liability of directors. Among its other powers, the Federal Deposit Insurance Corporation, in the performance of its powers and duties as such liquidator, shall have the right and power, upon the order of a court of record of competent

jurisdiction, to enforce the individual liability of the directors of any such banking institution.

SECTION 10. 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.

Passed the House of Representatives the 16th day of February, 2010.

Presiding Officer of the House of Representatives

Passed the Senate the 5th day of April, 2010.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 6th **day of** April, 20 10, **at** 2:47 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 9th **day of** April, 20 10, **at** 6:45 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 12th **day of** April, 20 10, **at** 2:21 **o'clock** P **M.**

By: M. Susan Savage