

HOUSE BILL No. 2560

By Committee on Financial Institutions and Pensions

Requested by Brock Roehler on behalf of the State Bank Commissioner

1-22

1 AN ACT concerning financial institutions; relating to the state banking
2 code; providing when an application is considered abandoned or
3 expired; allowing an originating trustee to have such trustee's principal
4 place of business outside of Kansas; amending K.S.A. 9-535, 9-806, 9-
5 1721 and 9-2107 and repealing the existing sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 9-535 is hereby amended to read as follows: 9-535.

9 (a) The commissioner shall approve the application if the commissioner
10 determines that the application favorably meets each and every factor
11 prescribed in K.S.A. 9-534, and amendments thereto, the proposed
12 acquisition is in the interest of the depositors and creditors of the Kansas
13 state chartered bank or bank holding company that has an ownership
14 interest in a Kansas state chartered bank ~~which~~ *that* is the subject of the
15 proposed acquisition and in the public interest generally. ~~Otherwise, the~~
16 ~~application shall be denied.~~

17 (b) If the commissioner denies the application, the applicant shall
18 have the right to a hearing before the state banking board to be conducted
19 in accordance with the Kansas administrative procedure act. The state
20 banking board shall render the board's decision affirming or rescinding the
21 determination of the commissioner. Any action of the state banking board
22 pursuant to this section is subject to review in accordance with the Kansas
23 judicial review act.

24 Sec. 2. K.S.A. 9-806 is hereby amended to read as follows: 9-806. (a)
25 *If the applicant fails to complete any application under the state banking*
26 *code within 60 days after being notified that the application is incomplete,*
27 *such application shall be considered abandoned and the application fee*
28 *shall not be refunded. An applicant whose application is abandoned under*
29 *this section may reapply at any time.*

30 (b) *Except as provided by subsection (c), the bank or trust company*
31 *shall engage in the activity requiring an application and approval by the*
32 *commissioner or state banking board within 18 months from the date of*
33 *approval. If the bank or trust company fails to engage in the activity*
34 *within 18 months from the date of the approval, the application shall be*
35 *deemed expired and a new application, application fee and approval is*

1 *required. The provisions of this subsection do not apply to applications*
2 *approved under K.S.A. 9-1601, and amendments thereto.*

3 (c) Any newly organized bank or trust company ~~which~~ that did not
4 begin business within 120 days after a certificate of authority has been
5 issued to such bank or trust company by the commissioner shall not
6 engage in the banking business or the business of a trust company without
7 again obtaining a certificate of authority from the commissioner.

8 (d) *The commissioner may extend the deadline under subsection (b)*
9 *or (c):*

10 (1) *Indefinitely, if approval from another state or federal regulator is*
11 *necessary for the bank or trust company to engage in the activity; or*

12 (2) *up to 180 days for good cause.*

13 (e) *The state banking board may designate the commissioner to*
14 *determine the completeness of any application requiring state banking*
15 *board approval or deem as expired any state banking board approved*
16 *application.*

17 Sec. 3. K.S.A. 9-1721 is hereby amended to read as follows: 9-1721.

18 (a) The person proposing to acquire control of a bank or trust company
19 undertaking a merger transaction, hereinafter referred to as the applicant,
20 shall file ~~an~~ a *complete* application with the commissioner at least 60 days
21 prior to the proposed change of control or merger transaction. If the
22 commissioner does not act on the *complete* application within the 60-day
23 time period *and the applicant has received approval from all other*
24 *applicable federal and state agencies*, the application shall stand approved.
25 The commissioner may, for any reason, extend the time period to act on an
26 application for an additional 30 days. The time period to act on an
27 application may be further extended if the commissioner determines that
28 the applicant has not furnished all the information required under K.S.A.
29 9-1722, and amendments thereto, or that, in the commissioner's judgment,
30 any material information submitted is substantially inaccurate. The
31 commissioner may waive the 60-day prior notice requirement if the
32 acquired bank or trust company is under a formal corrective action.

33 (b) Upon the filing of an application, the commissioner shall make an
34 investigation of the applicant for the change of control or merger
35 transaction. The commissioner may deny the application if the
36 commissioner finds the:

37 (1) Proposed change of control or merger transaction would result in
38 a monopoly or would be in furtherance of any combination or conspiracy
39 to monopolize or attempt to monopolize the business of banking or trust
40 services in any part of this state;

41 (2) financial condition of the applicant might jeopardize the financial
42 stability of the bank or trust company or prejudice the interests of the
43 depositors of a bank;

1 (3) competence, experience or integrity of the applicant or of any of
2 the proposed management personnel of the bank or trust company or
3 resulting bank or trust company indicates it would not be in the interest of
4 the depositors of the bank, the clients of trust services, or in the interest of
5 the public; or

6 (4) applicant neglects, fails or refuses to furnish the commissioner
7 with all of the information required by the commissioner.

8 (c) Upon service of an order denying an application, the applicant
9 shall have the right to a hearing to be conducted in accordance with the
10 Kansas administrative procedure act before the state banking board. Any
11 final order of the commissioner pursuant to this section is subject to
12 review in accordance with the Kansas judicial review act.

13 Sec. 4. K.S.A. 9-2107 is hereby amended to read as follows: 9-2107.

14 (a) As used in this section:

15 (1) "Contracting trustee" means any trust company, as defined in
16 K.S.A. 9-701, and amendments thereto, any bank that has been granted
17 trust authority by the commissioner under K.S.A. 9-1602, and amendments
18 thereto, any national bank chartered to do business in Kansas that has been
19 granted trust authority by the comptroller of the currency under 12 U.S.C.
20 § 92a, any bank that has been granted trust authority or any trust company,
21 regardless of where such bank or trust company is located, that is
22 controlled, as defined in K.S.A. 9-1612, and amendments thereto, by the
23 same bank holding company as any trust company, state bank or national
24 bank chartered to do business in Kansas, which accepts or succeeds to any
25 fiduciary responsibility as provided in this section;

26 (2) "originating trustee" means any trust company, bank, national
27 banking association, savings and loan association or savings bank ~~which~~
28 ~~that~~ has trust powers ~~and its principal place of business is in this state and~~
29 ~~which~~ places or transfers any fiduciary responsibility to a contracting
30 trustee as provided in this section; and

31 (3) "financial institution" means any bank, national banking
32 association, savings and loan association or savings bank ~~which~~ ~~that~~ has
33 its principal place of business in this state but ~~which~~ ~~that~~ does not have
34 trust powers.

35 (b) Any contracting trustee and any originating trustee may enter into
36 an agreement by which the contracting trustee, without any further
37 authorization of any kind, succeeds to and is substituted for the originating
38 trustee as to all fiduciary powers, rights, duties, privileges and liabilities
39 with respect to all accounts for which the originating trustee serves in any
40 fiduciary capacity, except as may be provided otherwise in the agreement.
41 Notwithstanding the provisions of this section, ~~no contracting trustee with~~
42 ~~a home office outside the state of Kansas shall enter into an agreement~~
43 ~~except with an originating trustee which is commonly controlled as~~

1 ~~defined in K.S.A. 9-1612, and amendments thereto, by the same bank~~
2 ~~holding company either the contracting trustee or the originating trustee~~
3 ~~shall have its principal place of business in this state.~~

4 (c) Unless the agreement expressly provides otherwise, upon the
5 effective date of the substitution:

6 (1) The contracting trustee shall be deemed to be named as the
7 fiduciary in all writings, including, without limitation, trust agreements,
8 wills and court orders, which pertain to the affected fiduciary accounts;
9 and

10 (2) the originating trustee is absolved from all fiduciary duties and
11 obligations arising under such writings and shall discontinue the exercise
12 of any fiduciary duties with respect to such writings, except that the
13 originating trustee is not absolved or discharged from any duty to account
14 required by K.S.A. 59-1709, and amendments thereto, or any other
15 applicable statute, rule of law, rules and regulations or court order, nor
16 shall the originating trustee be absolved from any breach of fiduciary duty
17 or obligation occurring prior to the effective date of the agreement.

18 (d) The agreement may authorize the contracting trustee:

19 (1) To establish a trust service desk at any office of the originating
20 trustee at which the contracting trustee may conduct any trust business and
21 any business incidental thereto and which the contracting trustee may
22 otherwise conduct at its principal place of business; and

23 (2) to engage the originating trustee as the agent of the contracting
24 trustee, on a disclosed basis to customers, for the purposes of providing
25 administrative, advertising and safekeeping services incident to the
26 fiduciary services provided by the contracting trustee.

27 (e) Any contracting trustee may enter into an agreement with a
28 financial institution providing that the contracting trustee may establish a
29 trust service desk as authorized by subsection (d) in the offices of such
30 financial institution and which provides such financial institution, on a
31 disclosed basis to customers, may act as the agent of contracting trustee for
32 purposes of providing administrative services and advertising incident to
33 the fiduciary services to be performed by the contracting trustee.

34 (f) No activity authorized by subsections (b) through (e) shall be
35 conducted by any contracting trustee, originating trustee or financial
36 institution until an application for such authority has been submitted to and
37 approved by the commissioner. The application shall be in the form and
38 contain the information required by the commissioner, which shall at a
39 minimum include certified copies of the following documents:

40 (1) The agreement;

41 (2) the written action taken by the board of directors of the
42 originating trustee or financial institution approving the agreement;

43 (3) all other required regulatory approvals;

1 (4) proof of publication of notice that the applicant intends to file or
2 has filed an application pursuant to this section. The notice shall be
3 published in a newspaper of general circulation in the county where the
4 principal office of the originating trustee or financial institution is located.
5 The notice shall be in the form prescribed by the commissioner and shall
6 contain the name of the applicant contracting trustee and the originating
7 trustee, and a solicitation for written comments. The notice shall be
8 published on the same day for two consecutive weeks and provide for a
9 comment period of not less than 10 days after the date of the second
10 publication; and

11 (5) a certification by the parties to the agreement that written notice
12 of the proposed substitution was sent by first-class mail to each co-
13 fiduciary, each surviving settlor of a trust, each ward of a guardianship,
14 each person that has sole or shared power to remove the originating trustee
15 as fiduciary and each adult beneficiary currently receiving or entitled to
16 receive a distribution of principle or income from a fiduciary account
17 affected by the agreement, and that such notice was sent to each such
18 person's address as shown in the originating trustee's records. An
19 unintentional failure to give such notice shall not impair the validity or
20 effect of any such agreement, except an intentional failure to give such
21 notice shall render the agreement null and void as to the party not
22 receiving the notice of substitution.

23 (g) A contracting trustee making application to the commissioner for
24 approval of any agreement pursuant to this section shall pay to the
25 commissioner a fee, in an amount established pursuant to K.S.A. 9-1726,
26 and amendments thereto, to defray the expenses of the commissioner in
27 the examination and investigation of the application. The commissioner
28 shall remit all moneys received under this section to the state treasurer in
29 accordance with the provisions of K.S.A. 75-4215, and amendments
30 thereto. Upon receipt of each such remittance, the state treasurer shall
31 deposit the entire amount in the state treasury to the credit of the bank
32 investigation fund. The moneys in the bank investigation fund shall be
33 used to pay the expenses of the commissioner, or designee, in the
34 examination and investigation of such applications and any unused balance
35 shall be transferred to the bank commissioner fee fund.

36 (h) Upon the filing of a complete application with the commissioner,
37 the commissioner shall make or cause to be made, a careful examination
38 and investigation of the proposed agreement. If the commissioner finds
39 any of the following matters unfavorably, the commissioner may deny the
40 application:

41 (1) The reasonable probability of usefulness and success of the
42 contracting trustee; and

43 (2) the financial history and condition of the contracting trustee

1 including the character, qualifications and experience of the officers
2 employed by the contracting trustee.

3 (i) The commissioner shall render approval or disapproval of the
4 application within 90 days of receiving a complete application.

5 (j) Upon service of an order denying an application, the applicant
6 shall have the right to a hearing to be conducted in accordance with the
7 Kansas administrative procedure act before the state banking board. Any
8 final order of the commissioner pursuant to this section is subject to
9 review in accordance with the Kansas judicial review act.

10 (k) When the commissioner determines that any contracting trustee
11 domiciled in this state has entered into a contracting agreement in violation
12 of the laws governing the operation of such contracting trustee, the
13 commissioner may take such action as available under K.S.A. 9-1714, 9-
14 1805, 9-1807 or 9-1809, and amendments thereto, to remedy such
15 violation.

16 (l) Any party entitled to receive a notice under subsection (f)(5) may
17 file a petition in the court having jurisdiction over the fiduciary
18 relationship, or if none, in the district court in the county where the
19 originating trustee has its principal office, seeking to remove any
20 contracting trustee substituted or about to be substituted as fiduciary
21 pursuant to this section. Unless the contracting trustee files a written
22 consent to its removal or a written declination to act subsequent to the
23 filing of the petition, the court, upon notice and hearing, shall determine
24 the best interest of the petitioner and all other parties concerned and shall
25 fashion such relief as the court deems appropriate in the circumstances,
26 including the awarding of reasonable attorney fees. The right to file a
27 petition under this subsection shall be in addition to any other rights to
28 remove the fiduciary provided by any other statute or regulation or by the
29 writing creating the fiduciary relationship. If the removal of the fiduciary
30 is prompted solely as a result of the contracting agreement, any reasonable
31 cost associated with such removal and transfer shall be paid by the
32 originating trustee or financial institution entering into the agreement.

33 Sec. 5. K.S.A. 9-535, 9-806, 9-1721 and 9-2107 are hereby repealed.

34 Sec. 6. This act shall take effect and be in force from and after its
35 publication in the statute book.