

HOUSE BILL 1423

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 45, Chapter 1 and Title 45, Chapter 2, relative to the regulation of trust companies.

WHEREAS, the Tennessee General Assembly recognizes that the market for trust and trust services across the nation is a rapidly growing sector of the nation's economy; and

WHEREAS, Tennessee is uniquely positioned to provide the most attractive legal and regulatory environment for individuals and families seeking to establish and locate their trusts and investment assets; and

WHEREAS, it is the desire of the General Assembly to establish Tennessee as the best and most attractive legal and regulatory environment in the nation for forming and operating a trust company by simplifying and clarifying the formation process and relieving certain unnecessary regulatory limitations; and

WHEREAS, the General Assembly finds that this act will help attract well-paying jobs in this state for trust and investment management and the legal and accounting professions, and support an infrastructure required to service this growing sector of the nation's economy; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-1-103(27), is amended by deleting the subsection in its entirety and substituting instead the following language:

"State trust company" means a corporation or limited liability company organized or reorganized under the Banking Act, as compiled in this chapter and chapter 2 of this title, whose purposes and power are limited to fiduciary purposes and powers, including a trust company previously organized under the laws of this state;

SECTION 2. Tennessee Code Annotated, Section 45-2-1602(a), is amended by adding the following language as a new subdivision (3):

(3) The commissioner shall examine a state trust company at least once in an eighteen-month period, except that the commissioner may extend this examination cycle up to an additional eighteen (18) months. In making this determination, the commissioner may consider the state trust company's quality of management, capitalization, risk profile and any other factors the commissioner deems relevant. In no event may a state trust company's examination cycle be extended if the company did not receive a composite rating of one (1) or two (2) at its last examination.

SECTION 3. Tennessee Code Annotated, Title 45, Chapter 2, is amended by adding the following language as a new part:

45-2-2101.

(a) Parts 1, 2, 3, 4, 5, 7, 8, and 19 of this chapter do not apply to trust companies, except for §§ 45-2-104, 45-2-105, 45-2-208, 45-2-211, 45-2-215(b), 45-2-217, 45-2-218, 45-2-219, 45-2-220, 45-2-402(d) and (e), 45-2-404 and 45-2-405, and as otherwise provided in this part or as determined by the commissioner.

(b) Part 14 of this chapter does not apply to trust companies, except for §§ 45-2-1408 – 1411; and, in regards to § 45-2-1409, for a state trust company, the “application for an interstate merger transaction with the responsible federal bank supervisory agency,” means the merger application that is filed with the responsible state agency.

(c) All provisions referenced in this section are in addition to those other statutes in this chapter that are not applicable to trust companies, as determined by the commissioner under § 45-1-124.

45-2-2102.

(a) Any number of persons may act as incorporators or organizers of a state trust company.

(b) Subject to this chapter, a state trust company shall be organized as a corporation under the Tennessee Business Corporation Act, compiled in title 48, chapters 11-27, or a limited liability company under the Tennessee Revised Limited Liability Company Act, compiled in title 48, chapter 249.

(c) To form a state trust company, the incorporators or organizers shall:

- (1) Submit an application for charter, pursuant to § 45-2-2103; and
- (2) If the application is approved by the commissioner, submit an application for a certificate of authority, pursuant to § 45-2-2106.

(d) For purposes of this part, if the trust company is being formed as a limited liability company, all references to an application for charter shall also mean an application for articles of organization; all references to incorporators shall also mean organizers; and all references to stock or shareholders shall also include membership interests or members, respectively. Any reference to a director shall also mean a manager, if the trust company is being formed as a manager-managed limited liability company. Any reference to applicant shall mean the incorporators or organizers, or the trust company itself, once its corporate existence has begun.

(e) Prior to submitting an application for charter, each incorporator or organizer shall subscribe and pay in full, in cash, for common stock in a minimum amount representing in aggregate at least ten percent (10%) of the proposed capital of the company. Subscriptions paid by the incorporators for their shares in the proposed trust company may be used to pay organizational expenses, but, in that case, shall not be commingled with funds in any account in which any non-incorporator funds have been or will be deposited.

45-2-2103.

(a) The application for charter shall be filed with the commissioner, in the form the commissioner prescribes, containing the following information:

- (1) The name, residence and occupation of each incorporator or organizer, or of each individual controlling any entity acting as an incorporator or organizer, as determined by the commissioner, as well as the amount of stock subscribed to, and paid for, by each;
- (2) The name and contact information of an individual to whom correspondence relative to the application may be sent;
- (3) The names and addresses, and other biographical information as the commissioner may require, of the initial directors or managers and officers of the trust company;
- (4) The proposed charter or articles of organization of the company, which, in addition to the provisions required by Tennessee Business Corporation Act or the Tennessee Revised Limited Liability Company Act, shall contain the following:
 - (A) The proposed name of the trust company, which, in the commissioner's judgment, is not likely to cause confusion to the affected public; and
 - (B) A statement that the company is being formed under the Tennessee Banking Act, as compiled in title 45, chapters 1 and 2, to act as a state trust company;
- (5) The proposed bylaws or operating agreement;
- (6) The address of the principal office in this state and of each proposed office, or, if not yet known, the communities in which the offices will be located;

- (7) A three-year business plan for the trust company including pro forma financial projections specifically identifying the opportunities for profitable employment of its fiduciary services;
- (8) The proposed capital structure of the trust company, complying with § 45-2-2107;
- (9) The offering circular or offering letter if capital is to be raised by public offering or private placement offering whether at the trust company level or by an entity that will control the state trust company and a copy of the escrow agreement for the escrow account in which funds shall be placed;
- (10) The nonrefundable application fee required by the commissioner; and
- (11) Such other information as the commissioner may require.
- (b) The commissioner may require each individual identified in subdivision (a)(1) and (3) to consent to a criminal history records check and provide their fingerprints in a form acceptable to the commissioner. The criminal history records check shall be conducted by the Tennessee bureau of investigation or the federal bureau of investigation, or both, at the expense of the applicant, and the results of the check shall be forwarded to the commissioner. For any individual who is not a citizen of the United States, the commissioner may conduct an international background investigation at the expense of the applicant, or require the applicant or individual to provide the results of an international background investigation on the individual, which the commissioner has the discretion to accept or reject.
- (c) The applicant shall use the phrase "in organization" after the proposed trust company's name, until the certificate of authority has been issued.

(d) At any time prior to approval of the application for charter, so long as the applicant has provided the address for the principal office, the applicant may request that the commissioner issue the charter or articles of organization by endorsing the document and having it filed with the secretary of state at the expense of the applicant and returning the original to the applicant.

(e) Within thirty (30) calendar days of filing the application, the commissioner shall notify the applicant whether the application for charter is deemed complete, or whether additional information is needed. Once the applicant has been notified that the application is deemed complete, the applicant shall promptly publish public notice of the formation of the trust company in the form and manner that the commissioner specifies. The ninety-day period referenced in § 45-2-2104(a) shall not commence until evidence of publication has been received by the commissioner.

(f) The commissioner may consider an application to be withdrawn if the commissioner has not received all information and fees required to complete the application within twelve (12) months after the date the application is first submitted, unless the commissioner has granted a request for extension. If an application is deemed withdrawn, a new application for charter, including a new application fee, is required to form a state trust company.

45-2-2104.

(a) Within ninety (90) days after the filing of a complete application for charter, the commissioner shall investigate and examine the application to determine whether:

(1) The character, reputation and financial standing of the incorporators or organizers is such to establish that the trust company is being formed in good faith for a proper purpose;

(2) The character, financial responsibility, and business experience and qualifications of the proposed directors and officers justify the belief that the trust company will be operated lawfully and successfully;

(3) The anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(4) The proposed capital structure is adequate, considering the factors described in § 45-2-2107 and other information in the application; and

(5) The incorporators or organizers have complied with all applicable provisions of this chapter.

(b) The commissioner may extend the ninety-day period if unique or novel issues are presented, or if additional time is needed to complete the investigation and examination.

(c) The commissioner shall consider the results of the investigation and examination, as well as any additional information that is available to the commissioner, and shall approve the application if satisfied that each requirement in subsection (a) has been met. If approval is granted, the commissioner shall issue the charter or articles of organization, if not yet issued, by filing the charter or articles with the secretary of state at the expense of the applicant and returning the original to the applicant.

(d) If the commissioner determines that the applicant does not meet the requirements in this chapter, the commissioner may deny the application by providing written notice to the applicant stating the basis for denial.

45-2-2105.

After the trust company charter or articles of organization have been issued by the commissioner, the incorporators, or, if directors have been initially appointed, the

directors of the proposed state trust company, may call for the payment of the subscriptions. The subscriptions shall be placed into an escrow account. The incorporators or directors, as appropriate, may not remove any funds from the escrow account prior to the issuance of the certificate of authority or upon written approval from the commissioner. In the case of an offering to raise capital to form a state trust company by an entity that will control the company, subscriptions shall also be placed into an escrow account and may not be removed prior to the issuance of the certificate of authority or upon written approval from the commissioner.

45-2-2106.

(a) In order to obtain a certificate of authority to begin acting as a fiduciary in this state, the applicant shall file an application for a certificate of authority, containing:

- (1) Evidence that capital and surplus have been fully paid in;
- (2) The name and address of each investor, and the number of shares or membership units purchased by each;
- (3) Evidence that adequate fidelity bond coverage on all active officers and employees satisfactory to the commissioner is in force;
- (4) Evidence that suitable insurance against burglary, robbery, theft, liability and similar insurable hazards to which the trust company may be exposed has been acquired;
- (5) Evidence that the bylaws or operating agreement, as applicable, have been adopted; and
- (6) Any other information that the commissioner may require to enable the commissioner to determine whether authority to commence business should be issued.

(b) The commissioner shall approve or deny an application for a certificate of authority within thirty (30) days after it is filed. If no application for a certificate of authority is filed within six (6) months following approval of an application for charter or any additional period allowed by the commissioner, or if a certificate of authority has been finally denied, the charter or articles of organization shall be forfeited and the company shall be liquidated in accordance with the orders of the commissioner.

(c) If the commissioner approves the application for a certificate of authority, the commissioner shall promptly issue a certificate of authority and deliver the same to the applicant. If the commissioner denies the application, the commissioner shall promptly mail a notice of the denial to the applicant stating the reasons for the denial.

(d) As of the date indicated on the certificate of authority, the applicant shall be a state trust company and authorized to act as a fiduciary in this state.

45-2-2107.

(a) No state trust company shall be organized with capital of less than five hundred thousand dollars (\$500,000), or such greater amount as may be required by the commissioner after considering the factors in this section.

(b) The commissioner may at any time prescribe a capital structure for a state trust company that the commissioner deems adequate for it to operate in a safe and sound manner. The commissioner shall consider the following factors in determining an adequate capital structure:

- (1) The nature and type of business conducted or to be conducted;
- (2) The nature and liquidity of assets currently held or to be held in the state trust company's own account;
- (3) The amount of fiduciary assets currently or projected to be under management or administration;

- (4) The type of fiduciary assets currently held or proposed to be held, and the depository of such assets;
- (5) The complexity of fiduciary duties and degree of discretion proposed currently or to be undertaken;
- (6) The competence and experience of current or proposed management;
- (7) The extent and adequacy of internal controls;
- (8) The reasonableness of any business plan for retaining or acquiring additional equity capital;
- (9) The existence and adequacy of insurance for protecting the state trust company's fiduciary assets; and
- (10) Any other factors the commissioner may deem relevant.

45-2-2108.

- (a) The business and affairs of a state trust company organized as a corporation shall be managed under a board of directors consisting of a minimum of five (5) and a maximum of twenty-five (25) members, as specified in the charter or bylaws. A trust company organized as a limited liability company shall be managed by a board consisting of a minimum of five (5) and a maximum of twenty-five (25) directors or managers, as specified in the articles of organization or operating agreement.
- (b) A majority of the board shall be citizens of the United States.
- (c) The board of directors shall meet at least quarterly, and a majority shall constitute a quorum. The commissioner may call a special meeting of the board. The board shall keep minutes of each meeting, including a record of attendance and of all votes cast by each director.

(d) A state trust company shall have only one (1) officer designated as the chief executive officer of the company, who shall also be a member of the board of directors.

(e) A state trust company shall report to the commissioner within twenty-four (24) hours any change in the position of chief executive officer and shall provide such other information as the commissioner may require.

(f) As indicated in § 45-2-2101, § 45-2-402 (d) and (e) shall apply to a state trust company.

(g) The directors shall at least annually prescribe the amount or penal sum of the fidelity bond and insurance coverage required by § 45-2-2106(a) and designate the sureties and underwriters of the bond and insurance, after giving due and careful consideration to all known elements and factors constituting a risk or hazard. The action shall be recorded in the minutes of the board of directors and be subject to approval by the commissioner.

(h) At least once in each calendar year, at intervals of not more than fifteen (15) months, a state trust company shall obtain and provide to the commissioner an audited financial statement prepared by an independent certified public accountant licensed to do business in this state. In the case of a trust company that is a subsidiary of a holding company, the commissioner may, in the commissioner's discretion, alternatively accept audited consolidated financial statements of the holding company, after considering the structure and complexity of the consolidated organization; provided, that the consolidated total assets of the trust company comprise seventy-five percent (75%) or more of the consolidated total assets of the holding company.

45-2-2109. Section 45-2-103(a), including the requirement to file an application and receive the prior approval of the commissioner, shall apply to a change of control in a state trust company or a controlling person of a state trust company. In the case of a change of control in

a controlling person, the commissioner may waive the filing of an application if, in the commissioner's discretion, the change in control does not pose any risk to the public. Along with the change of control application the commissioner may, in the commissioner's discretion, require fingerprints and consent to a criminal history records check, or an international criminal background investigation, as provided in § 45-2-2103(b).

SECTION 4. If any provision of this act or the application of any provision of this act to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect July 1, 2014, the public welfare requiring it.