

**286.3-146 Out-of-state trust company doing business in Kentucky -- Scope of activities -- Fiduciary-related activities limited by reciprocity -- Evidence and notice to be provided to commissioner.**

- (1) An out-of-state trust company may do any or all of the following, to the extent permitted under this section:
  - (a) Conduct trust business in this state, including but not limited to acting as a trustee, personal representative, executor, administrator of any kind, guardian, conservator, or in any other like or similar fiduciary capacity, whether the appointment is by law, will, deed, trust, mortgage, court order, or otherwise, to the extent the activities are authorized for a trust company organized under the laws of this state; or
  - (b) Establish, or acquire and maintain, a trust office or a trust representative office in this state.
- (2)
  - (a) An out-of-state trust company shall not conduct an activity authorized under subsection (1) of this section unless:
    1. A trust company organized under the laws of this state is permitted under the laws of the out-of-state trust company's home state to conduct a substantially similar activity in that state; and
    2. The trust company has filed with the commissioner, in a form and format prescribed by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A:
      - a. If the trust company has an agent for service of process in this state:
        - i. The name, physical address, telephone number, and electronic mail address of the trust company's agent in this state for service of process; and
        - ii. A certification that the trust company will, at least five (5) days prior to any change in the information provided under subpart i. of this subdivision, notify the commissioner of the change and update the information;
      - b. If the trust company does not have an agent for service of process in this state, an irrevocable consent appointing the Secretary of State as the trust company's attorney to receive lawful process issued against the trust company in this state; and
      - c. The confirmation required under subsection (6) of this section.
  - (b) If any out-of-state trust company engages in conduct in this state without making the service of process filing required under paragraph (a)2. of this subsection, the trust company shall be subject to service of process as provided in KRS 454.210.
  - (c) Notwithstanding this section, a court of this state may exercise jurisdiction over an out-of-state trust company on any other basis authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure.
- (3) An out-of-state trust company:

- (a) May, at its trust office or offices in Kentucky, act as a fiduciary in Kentucky and engage in other trust business, to the extent the activities are authorized for a trust company organized under the laws of this state; and
  - (b) Shall not, at its trust representative office or offices in Kentucky, act as a fiduciary, but it may engage in other trust business at the office or offices, including but not limited to marketing, soliciting, and operations, to the extent the activities are authorized for a trust company organized under the laws of this state.
- (4) (a) An out-of-state trust company desiring to establish, or acquire and maintain, an office or offices in this state shall:
- 1. File a written application on a form prescribed by the commissioner, which shall include:
    - a. The name of the out-of-state trust company;
    - b. The location of the proposed office or offices; and
    - c. The designation of the additional office or offices as trust offices or trust representative offices;
  - 2. Furnish the commissioner with:
    - a. A copy of the resolution adopted by the board of directors of the out-of-state trust company authorizing the office or offices; and
    - b. A notice from the out-of-state trust company's home state regulator that the proposed transaction is authorized by that regulator; and
  - 3. Pay the filing fee, if any, prescribed by the commissioner.
- (b) 1. An application made under paragraph (a) of this subsection shall be deemed approved on the sixty-first day after the date the commissioner receives the application, unless the commissioner:
- a. Specifies an earlier or later date; or
  - b. Extends the review period under subparagraph 3. of this paragraph.
2. With respect to an out-of-state trust company that is not a depository institution, the commissioner may condition approval of any application upon:
- a. Satisfaction by the out-of-state trust company of any requirement applicable to a trust company organized under the laws of this state; and
  - b. The out-of-state trust company furnishing the commissioner with satisfactory evidence that the conditions required for approval have been satisfied.
3. The commissioner may extend the sixty (60) day review period provided under this paragraph if he or she determines that additional information or time for analysis is required.
4. If the review period is extended, the out-of-state trust company shall not be authorized to commence business at the proposed office or offices until the trust company receives written approval of the commissioner.

- (c) The commissioner may deny an out-of-state trust company's application for an office or offices in this state if the commissioner finds that:
    - 1. The out-of-state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;
    - 2. The proposed office or offices are contrary to the public interest; or
    - 3. The proposed expansion is not authorized under applicable law.
  - (5) (a) An out-of-state trust company establishing or acquiring an office in this state shall:
    - 1. Provide evidence to the commissioner of compliance with the requirements:
      - a. Of the trust company's home state regulator and home state law for establishing, or acquiring and maintaining, the office; and
      - b. For foreign corporations under KRS Chapter 271B; and
    - 2. Provide evidence to the commissioner that all fiduciary obligations and liabilities of any trust company being acquired have been properly discharged or assumed.
  - (b) An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.
  - (c) Fulfillment of the requirements of this subsection shall not result in the establishment or acquisition of an out-of-state trust company office in this state until the commissioner has approved an application made for the office in accordance with subsection (4) of this section.
- (6) An out-of-state trust company that conducts trust business, establishes an office, or acquires and maintains an office in this state shall confirm to the commissioner, prior to commencing business in this state and at least annually thereafter, that for so long as it conducts trust business, or maintains a trust office or trust representative office, in this state, it will comply with all applicable laws of this state.

**Effective:** July 15, 2024

**History:** Amended 2024 Ky. Acts ch. 152, sec. 22, effective July 15, 2024. -- Created 2011 Ky. Acts ch. 67, sec. 4, effective June 8, 2011.