

CHAPTER 279

(SB 169)

AN ACT relating to banks.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 287 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, a CAMEL rating means a system of rating used by examiners of financial institutions to rate the institutions in five (5) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, and liquidity.*
- (2) *In addition to all other banking activities permitted by this chapter, a state bank receiving a CAMEL rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage if:*
 - (a) *It was operating as a national bank in any state;*
 - (b) *It was operating as a state bank, state thrift, or state savings bank in any state; or*
 - (c) *It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.*
- (3) *Before a state bank may engage in any of the banking activities permitted by subsection (1) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage. This legal opinion shall be maintained by the bank and provided to the department upon request.*

Section 2. KRS 287.011 is amended to read as follows:

- (1) There is created a Department of Financial Institutions, which constitutes a department of the state government within the meaning of KRS Chapter 12. The department shall be headed by a commissioner of financial institutions, who shall be the executive head of the department and shall be charged with the administration of the department.
- (2) The Department of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.
- (3) There is established within the Department of Financial Institutions the following divisions and offices:
 - (a) The Division of Financial Institutions, which shall be headed by a director appointed by the commissioner, subject to prior written approval of the Governor in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;
 - (b) The Division of Securities, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the commissioner;

- (c) The Division of Administrative Services, which shall be headed by a director appointed by the commissioner in accordance with KRS 12.050. The division shall be composed of organizational entities deemed appropriate by the commissioner;
 - (d) The Office of the Commissioner, which shall be composed of organizational entities deemed appropriate by the commissioner; and
 - (e) The Office of General Counsel, which shall be headed by a general counsel appointed by the commissioner in accordance with KRS 12.050. The office shall be composed of organizational entities as deemed appropriate by the commissioner.
- (4) ***The department may accept any application or other document required to be filed with the department in electronic format or in any other technology acceptable to the department.***

Section 3. KRS 287.100 is amended to read as follows:

A bank may:

- (1) Hold ~~such~~ personal property ***that*** ~~as~~ has been transferred to it as collateral for the payment of any debt;
- (2) Acquire and hold title to real estate, provided:
 - (a) The real estate is necessary or appropriate for the transaction of legitimate business ~~and the acquisition has been approved by the commissioner as required by KRS 287.103~~; and
 - (b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the commissioner;
- (3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;
- (4) Invest in the bonds of any federal home loan bank;
- (5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;
- (6) Invest, subject to the approval of the commissioner, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;
- (7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of ***the*** ~~such~~ company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;

- (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue *these*~~such~~ instruments of indebtedness;
 - (d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;
- (8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;
- (9) Invest in:
- (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;
- (10) (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and
- (b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the commissioner authorized to extend *the*~~such~~ disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;
- (11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;
- (12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank;~~and~~
- (13) Invest, with the prior approval of the commissioner, in the capital stock or bonds of a trust company; *and*
- (14) *Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.*

Investments *in accordance with* ~~pursuant to~~ subsections (7) and (9) of this section are subject to KRS 287.280 and 287.290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

Section 4. KRS 287.180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) *A bank may establish a branch in a county in which its principal office or an existing branch is located and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the commissioner may designate by the promulgation of administrative regulations, shall apply to the commissioner for permission to establish a branch.* ~~Any corporation presently or after July 13, 1990, engaged in the business of banking, and meeting the requirements of this subsection, may apply to the commissioner for permission to establish, within any county in which its principal office or an existing branch is located, a branch at which all of the powers conferred in subsection (1) of this section may be exercised.~~ Before the commissioner shall approve or disapprove any application made under this subsection *the commissioner* ~~he~~ shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:
 - (a) The permission to open a branch shall lapse one (1) year after the commissioner has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the commissioner, be extended for any period of time *the commissioner* ~~he~~ deems to be necessary; and
 - (b) An application to establish a branch office shall be approved or disapproved by the commissioner based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future *in accordance with* ~~pursuant to~~ the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the commissioner shall determine

that the public convenience and necessity will be served by the operation, and provided further that, at the time of the merger or purchase, each of the banks involved shall have been in operation for a period of five (5) years or more. The bank which does not survive the merger shall surrender its charter.

- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the commissioner. In the discretion of the commissioner the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

Section 5. KRS 287.185 is amended to read as follows:

A bank may move its principal office or a branch from one location to another. A bank, except for a bank that the commissioner may designate through the promulgation of administrative regulations, shall apply to the commissioner for approval to relocate its principal office or a branch~~[(1) — No branch or principal office of any bank shall be moved from one location to another without the approval of the commissioner].~~ Before the commissioner shall approve or disapprove any change of location he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location.

~~[(2) — If a bank wishes to move its principal office from one location to another in the same county and retain its former principal office as a branch, the provisions of subsection (1) of this section shall be followed in regard to approval of the change of location. A final order by the commissioner approving or disapproving the change of location shall be deemed to constitute a similar approval or disapproval of the former principal office as a branch, and no further administrative proceedings shall be necessary.]~~ Section 6. KRS 287.900 is amended to read as follows:

- (1) For purposes of this section and KRS 287.905:
 - (a) "Bank" means any institution organized under this chapter, the banking laws of another state, or the National Bank Act, as amended, to do a banking business. However, it shall not include an "interim bank" chartered solely for the purpose of facilitating the acquisition of an existing bank unless the existing bank has been in existence for less than five (5) years;
 - (b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;
 - (c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. Individual does not include a corporation; and

- (d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally-insured depository institutions to their respective supervisory authorities.
- (2) Any individual, or any bank holding company having its principal place of business in this state, may acquire control of one (1) or more banks or bank holding companies wherever located, except that no individual, who on July 13, 1984, controls a bank or bank holding company wherever located, and no bank holding company wherever located, may acquire, directly or indirectly, control *of greater than fifty percent (50%) of the voting securities* of a bank having its principal place of business in this state if the bank was chartered after July 13, 1984, and if, at the time of the acquisition, the bank has been in existence less than five (5) years. The provisions of this subsection shall not prohibit the organization of a one (1) bank holding company for the purpose of acquiring control of a bank even if the bank was chartered after July 13, 1984, and has been in existence less than five (5) years at the time of the acquisition.
- (3) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent *June 30 quarterly report*~~[year-end reports]~~ made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.
- (4) The limitations set forth in this section or any other provision of this chapter or any *administrative* regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his *or her* discretion, the commissioner, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (5) The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of business in the same county and the operation of the bank as a branch so long as the provisions of KRS 287.180(4) have been satisfied.

Section 7. KRS 287.920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
- (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky *in accordance with* ~~[pursuant to]~~ an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner and pay the fee prescribed by KRS 287.480. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his *or her* approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky *in accordance with* ~~[pursuant to]~~ an interstate merger transaction in which the out-of-state state bank is the resulting bank. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the commissioner, pay the fee prescribed by KRS 287.480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 287.180(2) and the commissioner shall base his *or her* approval or disapproval in the same manner as prescribed in KRS 287.180(2).
- (4) The bank to be acquired in an interstate merger transaction under the provisions of subsection (3) of this section shall have been involved in operation for a period of five (5) years or more. No interstate merger transaction under subsections (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally-insured depository institutions in this state as reported in the most recent *June 30 quarterly report* ~~[year-end reports]~~ made by the institutions to their respective supervisory authorities which are available at the time of the transaction.
- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.
- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
 - (a) Authorized under the laws of the host state for banks chartered by the host state; or
 - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

Approved March 31, 2000