

**CHAPTER 183****(SB 45)**

AN ACT relating to financial services.

*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) *For purposes of this section, unless the context requires otherwise, "financial institution" means any person or entity operating in the Commonwealth of Kentucky, as permitted under the laws of this state, any other state, or the United States, as a bank, bank holding company, credit union, savings and loan association, or any wholly owned subsidiary thereof.*
- (2) *Except as provided in subsection (3) of this section, no person that is not a financial institution may use the trade name, trademark, service mark, logo, or symbol, or any combination thereof, of any financial institution, or any trade name, trademark, service mark, logo, or symbol, or any combination thereof, that is similar to the trade name, trademark, service mark, logo, or symbol of such a financial institution, in any marketing material, solicitation, or advertising provided or directed to another person in a manner such that a reasonable person may be confused, mistaken, or deceived that the marketing material, solicitation, or advertising originated from, is endorsed by, or has been consented to by the financial institution.*
- (3) *Subsection (2) of this section shall not apply to a person who uses the trade name, trademark, service mark, logo, or symbol of a financial institution with the written consent of the financial institution.*
- (4) *The financial institution whose trade name, trademark, service mark, logo, or symbol has been used in violation of this section, may institute an action in the Franklin Circuit Court or any court of competent jurisdiction against any person or entity in violation of subsection (2) of this section to enjoin a continuance of any activity in violation of subsection (2) of this section and, if injured thereby, for the recovery of damages at three (3) times the amount of any actual damages sustained and for civil penalties in the amount of one thousand dollars (\$1,000). It shall not be necessary that actual damages be alleged or proved in order to recover injunctive relief or civil penalties. The penalties prescribed by this subsection shall be cumulative.*

Section 2. KRS 287.010 is amended to read as follows:

As used in this chapter, unless the context requires otherwise:

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
  - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
  - (b) With respect to a national bank, the state in which the main office of the bank is located;
- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "Executive director" means the executive director of financial institutions;
- (8) "Office" means the Office of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;
- (10) "Trust company" includes every corporation authorized by this chapter to do a trust business;

- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
- (a) The par value of all shares of the corporation having a par value that have been issued;
  - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
  - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law;
- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value, or both;
- (14) "Municipality" means a county, city, or urban-county government;~~[- and]~~
- (15) "Political subdivision" means a municipality, school district, or other municipal authority;
- (16) ***"Corporation" means either a for-profit corporation or limited liability company;***
- (17) ***"Share" means the shares of stock or the unit of equity into which the proprietary interests in a corporation are divided;***
- (18) ***"Stock" means the corporation's shares;***
- (19) ***"Stockholder" or "shareholder" means an owner of the corporation's shares;***
- (20) ***"Board of directors" means the governing body of a corporation elected or otherwise chosen by the shareholders, including the managers of a limited liability company;***
- (21) ***"Director" means a member of the board of directors;***
- (22) ***"Articles of incorporation" means the organizing documents of a corporation filed with the Secretary of State in accordance with KRS Chapter 271B or 275; and***
- (23) ***"Dividends" means a distribution of money, stock, or other property to shareholders of a corporation.***

Section 3. KRS 287.013 is amended to read as follows:

- (1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:
- (a) Three (3) members selected from the banking industry regulated by the office with appropriate recognition as to bank size and geographic diversity;
  - (b) Three (3) members selected from the broker/dealer securities industry regulated by the department;
  - (c) One (1) member selected from the credit union industry regulated by the department;
  - (d) One (1) member selected from the consumer finance or industrial loan industry regulated by the department;
  - (e) Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers, or directors of any financial institution; and
  - (f) The executive director, who shall also serve as chairman of the board.
- (2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, or industrial loan industry shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.

- (3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (4) No member of the board, other than the executive director, shall serve more than two (2) consecutive terms on the board.
- (5) The board shall first meet at the call of the Governor and thereafter as the ~~chairman~~~~board~~ shall determine~~;~~ ~~but at least quarterly,~~ at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.
- (6) Board members shall receive one hundred dollars (\$100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
- (7) The board shall:
  - (a) Prepare and submit at the Governor's request a list of candidates qualified to serve as executive director and recommend to the Governor a proposed salary for each nomination for executive director;
  - (b) Recommend to the Governor a proposed salary structure for other office staff in order to provide competitive salaries for recruitment and retention of staff;
  - (c) Receive and comment on various reports relating to the office and its activities as submitted to the board by the executive director or the Governor; and
  - (d) Review, consider and make recommendations to the executive director on any matters referred to the board by the executive director or the Governor.
- (8) In no event shall the board or its members interfere with the statutory duties of the executive director whose decisions shall be governed by law.

Section 4. KRS 287.040 is amended to read as follows:

- (1) Any five (5) or more persons may organize a banking corporation.
- (2) Any five (5) or more persons may organize a corporation for the purpose of conducting a trust business.
- (3) Any five (5) or more persons may organize a corporation for the purpose of conducting a combined banking and trust business.
- (4) The board of directors of a banking corporation, trust corporation, or combined bank and trust corporation shall be no less than the required number of ~~organizers~~~~incorporators~~.

Section 5. KRS 287.050 is amended to read as follows:

- (1) Before filing the articles of incorporation of any financial institution mentioned in KRS 287.040, the ~~organizers~~~~incorporators~~ shall present a copy of their proposed articles to the executive director who shall investigate the financial standing, moral character, and capability of each of the ~~organizers~~~~incorporators~~ and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.
- (2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the executive director may waive all or any part of the requirements of this chapter.
- (3) If the executive director determines that it is expedient and desirable to permit the proposed corporation to engage in business, he shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation *or limited liability company* law.

- (4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 287.040 shall be approved by the executive director before filing with the Secretary of State.

Section 6. KRS 287.065 is amended to read as follows:

~~(1) A majority of the directors of any board must be residents of Kentucky during their term of office.~~

~~(2) Each director shall exercise such ordinary care and diligence as necessary and reasonable to administer the affairs of the bank in a safe and sound manner. In this regard, the bank shall furnish each director with a copy of an appropriate publication outlining the duties of a bank director and an updated copy of the Kentucky banking law, and maintain in the bank updated copies of federal banking laws, as determined by administrative regulations.~~

Section 7. KRS 287.102 is amended 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 ***and is exempted from any statutes or administrative regulations which would be preempted if:***
  - (a) It was operating as a national bank in ***Kentucky***~~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 (2) 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 ***and the conditions under which such activity is allowed.*** This legal opinion shall be maintained by the bank and provided to the office upon request.
- (4) ***This section shall not apply to exempt any laws which regulate Kentucky state banks pertaining to deferred deposit transactions in KRS Chapter 368, title pledge lending in KRS Chapter 368, visitorial or examination powers, and interest rates.***

Section 8. KRS 287.103 is amended to read as follows:

- (1) It is hereby declared to be the policy of the Commonwealth of Kentucky that the investment of funds, by a bank chartered under the laws of Kentucky or a national banking association having its principal office in Kentucky, in real and personal property as now or hereafter provided by this chapter, be recognized as a normal, proper, necessary, and integral part of the legitimate business of such state or national banks.
- (2) All property owned and held by a state or national bank under this section shall be deemed to be property that is proper and necessary for carrying out its legitimate business within the meaning of KRS Chapter 271B ***or 275***, or any section of the Kentucky Revised Statutes relating to escheat.

Section 9. KRS 287.280 is amended to read as follows:

- (1) ***Except as provided in subsection (2) of this section***, no bank or trust company shall permit any person to become indebted to it or to become obligated as guarantor or surety to it in an amount exceeding twenty per cent (20%) of its capital stock actually paid in and its actual amount of surplus, unless the person pledges with it good collateral security or executes to it a mortgage upon real or personal property which at the time is of more than the cash value of the indebtedness or obligation above all other encumbrances; but the indebtedness or obligation of any person shall not exceed thirty percent (30%) of the paid-in capital and actual surplus of the bank or trust company.
- (2) ***A bank organized as a limited liability company shall not be covered by subsection (1) of this section, but shall comply with the legal lending limits applicable to national banks set forth in 12 U.S.C. sec. 84 and 12 C.F.R. sec. 32.4, as may be amended.***

- (3) No bank or trust company shall permit any of its directors or executive officers to become indebted to it or become obligated as guarantor or surety to it in an amount which exceeds that which any other person is authorized by this section to become indebted or obligated.
- ~~(4)~~~~(3)~~ In computing the indebtedness of any person, the liability of any partnership in which the person acts as a general partner shall be included, and any obligation entered into for the benefit of a person, partnership or association shall be included in the total liabilities of the person, partnership or association.
- ~~(5)~~~~(4)~~ Except as otherwise provided in this section, the same security, both in kind and amount, shall be required from stockholders as from nonstockholders.
- ~~(6)~~~~(5)~~ The discount of bills of exchange drawn against actually existing value, and the purchase or discounting of commercial or business paper actually owned by the person negotiating the paper shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness or obligation of any person selling or negotiating the paper to a bank.

Section 10. KRS 287.350 is amended to read as follows:

- (1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses, and interest and taxes accrued or due from the bank.
- ~~(2)~~ ~~Before any dividend is declared, other than upon its preferred stock, not less than ten percent (10%) of the net profits of the bank for the period covered by the dividend applicable to its common stock shall be carried to its surplus fund until such surplus fund amounts to a sum equal to the amount of its common capital stock.~~
- ~~(3)~~ The approval of the executive director shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

Section 11. KRS 287.450 is amended to read as follows:

- (1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the executive director or by an examiner appointed by the executive director. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.
- (2) The executive director, deputy director, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.
- (3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the executive director may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The executive director shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.
- (4) The executive director may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The executive director may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The executive director may accept reports of examinations and reports of investigation from other bank supervisory agencies and home state regulators in lieu of examinations made under state law. The executive director may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any *bank, bank holding company*, branch of an out-of-state state bank or any branch of a state bank

located in any host state. Information produced or provided under this section shall be considered confidential as provided in KRS 287.470.

Section 12. KRS 287.480 is amended to read as follows:

- (1) The following fees shall be paid to the executive director by corporations engaged in a banking or trust business:
  - (a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;
  - (b) For each state bank and branch of an out-of-state state bank subject to inspection and examination by the executive director, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the office by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the executive director shall determine to be necessary to carry out the duties of the office and shall be reasonably related to the costs incurred by the office in regulating banks and branches. The assessment schedule shall be set by administrative regulation;
  - (c) For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The executive director may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and
  - (d) Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the executive director, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.
- (2) The executive director, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any *bank, bank holding company*, branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

Section 13. KRS 287.820 is amended to read as follows:

- (1) For the purpose of this section:
  - (a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and
  - (b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.
- (2) ***A bank, except for a bank that the executive director may designate by the promulgation of administrative regulations, shall apply to the executive director for permission to establish a loan production office.*** ~~No bank shall operate a loan production office without prior approval of the executive director.~~ The executive director shall approve the application unless he finds that:
  - (a) The proposed operation of the loan production office is not in accordance with this section;
  - (b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;
  - (c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and
  - (d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.

- (3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.
- (4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.
- (5) The executive director may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.
- (6) The application and appeal process set forth in KRS Chapter 13B and the cease and desist powers of the executive director set forth in KRS 287.690 shall apply to loan production offices.

Section 14. KRS 287.990 is amended to read as follows:

- (1) Any person who violates subsection (2) of KRS 287.030 may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each day he is engaged in the private banking business.
- (2) Any institution that fails to make the report required by KRS 287.420 to the executive director within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 287.420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars (\$200).
- (3) If any person violates subsection (3) of KRS 287.440 his office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of subsection (3) of KRS 287.440 shall immediately report such fact to the executive director, who may remove the person so offending.
- (4) Any receiver of an insolvent institution who fails to comply with the provisions of this chapter shall be subject to the same penalties provided for solvent institutions and officers so offending.
- (5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the executive director, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.
- (6) Any deputy director or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the executive director, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than one hundred (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any executive director who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his office and shall be fined not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (8) Any bank or trust company that knowingly fails to make a report required by law or by the executive director within the time designated for the making thereof, or fails to include in such report any matter required by law or by the executive director, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars (\$1,000).
- (9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).

- (10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.
- (11) Any person violating any of the provisions of KRS 287.225 shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50) nor more than two thousand dollars (\$2,000).
- (12) Any person who willfully makes charges in excess of those permitted by KRS 287.720 to 287.770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.
- (13) Any bank which violates any provision of KRS 287.720 to 287.770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 287.740 and 287.750, and the debtor, or his legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 287.760.
- (14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 287.710 to 287.770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 287.710 to 287.770.
- (15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 287.690 which has become final shall forfeit and pay a fine of not more than one thousand dollars (\$1,000) per day for each day such violation continues. The fine shall be assessed by the executive director by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the executive director shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.
- (16) Any bank which violates the provisions of KRS 287.065~~(2)~~ may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The fines may be assessed by the executive director by written notice.
- (17) Any bank which violates any provisions of KRS 287.100(10) may be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) for the first violation, and may be fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for any subsequent violations.
- (18) Any officer or director who violates the provisions of KRS 287.280(1) *or* (2) may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation, and any officer or director who violates the provisions of KRS 287.280(3)~~(2)~~ may be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each violation. The fine may be assessed by the executive director by written notice.

Section 15. KRS 425.501 is amended to read as follows:

- (1) Any person in whose favor a final judgment in personam has been entered in any court of record of this state may, upon the filing of an affidavit by him or his agent or attorney in the office of the clerk of the court in which the judgment was entered, and in the same cause in which said judgment was obtained showing the date of the judgment and the amount due thereon, and that one (1) or more named persons hold property belonging to, or are indebted to, the judgment debtor, obtain an order of garnishment to be served in accordance with the Rules of Civil Procedure.
- (2) The judgment plaintiff shall not be required to execute bond to obtain the order.
- (3) The order of garnishment shall be served on the persons named as garnishees, and in addition a copy thereof shall be delivered by the garnishee to the judgment debtor or mailed to him at his last known address, *along with a processing fee in the amount of ten dollars (\$10) paid by the judgment plaintiff. The processing fee may be retained by the garnishee regardless of whether the court finds that the garnishee was or was not, at the time of service of the order upon him, possessed of any property of the judgment debtor.*



- (4) The judgment debtor may appear and claim the exemption of any property or debt that is exempt from execution, and on proof of exemption the garnishment shall be discharged as to the exempt property or debt.
- (5) If the court finds that the garnishee was, at the time of service of the order upon him, possessed of any property of the judgment debtor, or was indebted to him, and the property or debt is not exempt from execution, the court shall order the property or the proceeds of the debt applied upon the judgment.
- (6) Subsequent orders of garnishment against the same or other garnishees may be issued in the same manner until the judgment is satisfied.
- (7) The provisions of KRS Chapter 427 shall, as far as applicable, govern proceedings under the order.
- (8) The order of garnishment shall be served in accordance with the Rules of Civil Procedure. It shall summon the garnishees to answer in the manner and at the time required for an answer by the Rules of Civil Procedure, and to make due return thereof.

Section 16. KRS 382.270 is amended to read as follows:

No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be ***lodged for record and, thus***, valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law ~~and lodged for record~~. ***However, if a deed or deed of trust or mortgage conveying a legal or equitable title to real property is not so acknowledged or proved according to law, but is or has been, prior to the effective date of this Act, otherwise lodged for record, such deed or deed of trust or mortgage conveying a legal or equitable title to real property or creating a mortgage lien on real property shall be deemed to be validly lodged for record for purposes of KRS Chapter 382, and all interested parties shall be on constructive notice of the contents thereof.*** As used in this section "creditors" includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

Section 17. KRS 382.360 is amended to read as follows:

- (1) Liens by deed or mortgage may be discharged by an entry acknowledging their satisfaction on the margin of the record thereof, or in the alternative, at the option of the county clerk, in a marginal entry record, signed by the person entitled thereto, or his ***or her*** personal representative ***or agent***, and attested by the clerk, or may be discharged by a separate deed of release, which shall recite the date of the instrument and deed book and the page wherein it is recorded. Such release in the case of a mortgage or deed of trust shall have the effect to reinstate the title in the mortgagor or grantor or person entitled thereto. Each entry in the marginal entry record shall be linked to its respective referenced instrument in the indexing system for the referenced instruments.
- (2) If a lien or mortgage is released by a deed of release, the clerk shall immediately, at the option of the clerk, either link the release and its filing location to its respective referenced instrument in the indexing system for the referenced instrument, or endorse on the margin of the record wherein the lien is retained "Released by deed of release (stating whether in whole or in part) lodged for record (giving date, deed book and page wherein such deed of release may be found)" and the clerk shall also attest such certificate. ***The clerk shall cause the original deed of release to be delivered to the mortgagor or grantor or person entitled thereto.***
- (3) ***When a mortgage is assigned to another person, the assignee shall file the assignment for recording with the county clerk within thirty (30) days of the assignment and the county clerk shall attest the assignment and shall note the assignment in the blank space, or in a marginal entry record, beside a listing of the book and page of the document being assigned. Provided, however, that an assignee that reassigns the note prior to the thirtieth day after first acquiring the assignment may request that the subsequent assignee file the unfiled assignment with the new reassignment.***
- (4) ***Delivering an assignment to the assignee or a lien release to the mortgagor shall not substitute for filing the assignment or release with the county clerk, as required by this section.***
- (5) ***Notwithstanding the provisions of this section, nothing in this chapter shall require the legal holder of any note secured by lien in any deed or mortgage to file a release of any mortgage when the mortgage securing such paid note also secures a note or other obligation which remains unpaid.***
- (6) ***Failure of an assignee to record a mortgage assignment shall not affect the validity or perfection, or invalidity or lack of perfection, of a mortgage lien under applicable law.***

Section 18. KRS 382.365 is amended to read as follows:

- (1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.
- (2) ***An assignee of a lien on real property shall record the assignment in the county clerk's office as required by Section 17 of this Act. Failure of an assignee to record a mortgage assignment shall not affect the validity or perfection, or invalidity or lack of perfection, of a mortgage lien under applicable law.***
- (3) A proceeding may be filed by any owner of real property or any party acquiring an interest in the real property in District Court or Circuit Court against a lienholder that violates subsection (1) ***or*** (2) of this section. A proceeding filed under this section shall be given precedence over other matters pending before the court.
- ~~(4)~~~~(3)~~ Upon proof to the court of the lien being satisfied ***by payment in full to the final lienholder or final assignee***, the court shall enter a judgment ***noting the identity of the final lienholder or final assignee and authorizing and directing the master commissioner of the court to execute and file with the county clerk the requisite release or assignments or both, as appropriate***~~releasing the lien~~. The judgment shall be with costs including a reasonable attorney's fee. If the court finds that the lienholder received written notice of its failure to release and lacked good cause for not releasing the lien, the lienholder shall be liable to the owner of the real property ***or to a party with an interest in the real property*** in the amount of one hundred dollars (\$100) per day for each day, beginning on the fifteenth day after receipt of the written notice, of the violation for which good cause did not exist. ***This written notice shall be properly addressed and sent by certified mail or delivered in person to the final lienholder or final assignee as follows:***
- (a) ***For a corporation, to an officer at the lienholder's principal address or to an agent for process located in Kentucky; however, if the corporation is a foreign corporation and has not appointed an agent for process in Kentucky, then to the agent for process in the state of domicile of the corporation;***
- (b) ***For an individual, to the individual at the address shown on the mortgage, at the lienholder's residence or place of business, or at an address to which the lienholder has directed that correspondence or payoff be sent;***
- (c) ***For a trust or an estate, to a fiduciary at the address shown on the mortgage or at an address to which the lienholder has directed that correspondence or payoff be sent; and***
- (d) ***For any other entity, including but not limited to, limited liability companies, partnerships, limited partnerships, limited liability partnerships, and associations, to an officer, partner, or member at the entity's principal place of business or to an agent for process.***
- ~~(5)~~~~(4)~~ A lienholder that continues to fail to release a satisfied real estate lien, without good cause, within forty-five (45) days from the date of written notice shall be liable to the owner of the real property ***or to a party with an interest in the real property*** for an additional four hundred dollars (\$400) per day for each day for which good cause did not exist after the forty-fifth day from the date of written notice, for a total of five hundred dollars (\$500) per day for each day for which good cause did not exist after the forty-fifth day from the date of written notice. The lienholder shall also be liable for any actual expense including a reasonable attorney's fee incurred by the owner ***or a party with an interest in the real property*** in securing the release of real property by such violation ***and in securing an award of damages. Damages under this subsection for failure to record an assignment pursuant to subsection (3) of Section 17 of this Act shall not exceed three (3) times the actual damages, plus attorney's fees and court costs, but in no event less than five hundred dollars (\$500).***
- ~~(6)~~~~(5)~~ The former holder of a lien on real property shall send by regular mail a copy of the lien release to the property owner at his ***or her*** last known address within seven (7) days of the release. A former lienholder that violates this subsection shall be liable to the owner of the real property for fifty dollars (\$50) and any actual expense incurred by the owner in obtaining documentation of the lien release.
- ~~(7)~~~~(6)~~ For the purposes of this section, "date of satisfaction" means that date of receipt by a holder of a lien on real property of a sum of money in the form of a certified check, cashier's check, wired transferred funds, or other form of payment satisfactory to the lienholder that is sufficient to pay the principal, interest, and other costs owing on the obligation that is secured by the lien on the property.
- ~~(8)~~~~(7)~~ The provisions of this section shall not apply when a lienholder is deceased and the estate of the lienholder has not been settled.

- ~~(9)~~~~(8)~~ The state licensing agency, if applicable, or any holder of a lien on real property shall be notified of the disposition of any actions brought under this section against the lienholder.
- ~~(10)~~~~(9)~~ The provisions of this section shall be held and construed as ancillary and supplemental to any other remedy provided by law.
- (11) *If more than one (1) owner or party with an interest in the real property brings an action to recover damages under this section, any statutory damages shall be allocated equally among recovering parties in the absence of agreement otherwise among said parties. The entry of a judgment awarding damages shall bar a subsequent action by any other person or entity to recover damages for the same violation.***

SECTION 19. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

*A recorded mortgage may be amended by an affidavit of amendment prepared by an attorney to correct clerical errors or omitted information. An amendment may not change any term, dollar amount, or interest rate in the mortgage, unless signed by the mortgagor and secured party. The attorney preparing the affidavit shall certify in the affidavit that notice of filing the amendment has been given to the mortgagor by mailing a copy of the amendment to the mortgagor at the address shown on the original mortgage. A subsequent release of the mortgage releases any amendments to the original mortgage.*

SECTION 20. A NEW SECTION OF KRS CHAPTER 382 IS CREATED TO READ AS FOLLOWS:

*Any party to a deed or the attorney who prepared the deed or other persons with personal knowledge may execute and file with the county clerk his or her affidavit to correct or supplement information regarding the marital status of any party to a deed, or to supplement or correct information contained in or absent from the acknowledgment or notary portion of a deed, and for no other purpose. Nothing in this section is intended to replace any existing statutory requirement regarding the execution and filing of deeds. The affidavit shall contain the name, address, and signature of the person who prepared the instrument as required by KRS 382.335.*

**Approved April 21, 2006.**