

CHAPTER 67**(HB 342)**

AN ACT relating to financial matters.

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

➔Section 1. KRS 395.005 is amended to read as follows:

The following persons may be appointed as fiduciary:

- (1) Any resident of the state of Kentucky, over eighteen (18) years of age, except as set out in KRS 395.080, and any national bank located in Kentucky having fiduciary powers and any state bank or trust company incorporated under the laws of the state of Kentucky and authorized by law to act as fiduciary;~~[-]~~
- (2) ***To the extent permitted pursuant to subsection (6) of Section 6 of this Act and Section 4 of this Act, any bank or trust company organized under the laws of a state other than Kentucky; and***
- (3) Any nonresident of legal age who is as to the decedent, ward, or incompetent, related by consanguinity, marriage, adoption or the spouse of such person so related.

➔Section 2. KRS 286.3-010 is amended to read as follows:

As used in this subtitle, 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) "Commissioner" means the commissioner of financial institutions;
- (8) "Department" means the Department 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 subtitle 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;
- (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;
- (24) *"Out-of-state trust company" means a trust company that is chartered under the laws of a state other than Kentucky; and*
- (25) *"Trust representative office" means an office at which a trust company has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary.*

➔SECTION 3. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *A Kentucky state trust company:*
 - (a) *May, at its trust office or offices in Kentucky or any other state or foreign country, act as a fiduciary and engage in trust business as permitted by Kentucky law or the applicable law of the state or foreign country; and*
 - (b) *May not, at its trust representative office or offices in Kentucky or any other state or foreign country, act as a fiduciary, but it may otherwise engage in other fiduciary related activities, including but not limited to marketing, soliciting, and operating through the trust representative office as permitted by this section.*
- (2) *A Kentucky state trust company may conduct any activities at an office outside of this state that are permissible for a trust company chartered by the host state where the office of the Kentucky state trust company is located, except to the extent the activities are expressly prohibited by the laws of Kentucky or by any applicable law of the host state or foreign country.*
- (3) *A Kentucky state trust company shall have and continuously maintain a principal office in this state.*
- (4) *A Kentucky state trust company may establish or acquire and maintain trust offices or trust representative offices in this state. A Kentucky state trust company desiring to establish or acquire and maintain an office in this state shall:*
 - (a) *File a written notice on a form prescribed by the commissioner setting forth the following:*
 - 1. *The name of the Kentucky state trust company;*
 - 2. *The location of the proposed office or offices; and*
 - 3. *The designation of the additional office or offices as trust offices or trust representative offices;*
 - (b) *Furnish the commissioner with a copy of the resolution adopted by the board of directors authorizing the office;*
 - (c) *Pay the filing fee, if any, prescribed by the commissioner;*

- (d) *Commence business at the office no sooner than thirty-one (31) days after the date the commissioner receives notice as specified by paragraph (a) of this subsection, unless the commissioner specifies an earlier or later date. The thirty (30) day period of review may be extended by the commissioner if he or she determines the notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the Kentucky state trust company may establish or acquire and maintain the additional office only on prior written approval by the commissioner. The commissioner may deny approval of the additional office if the commissioner finds that:*
1. *The Kentucky state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 2. *The proposed office would be contrary to the public interest; or*
 3. *The proposed expansion is not authorized by applicable law.*
- (5) *A Kentucky state trust company may establish or acquire and maintain a trust office or a trust representative office in a state other than this state. A Kentucky state trust company desiring to establish or acquire and maintain an office in another state shall:*
- (a) *File a written notice on a form prescribed by the commissioner setting forth the following:*
 1. *The name of the Kentucky state trust company;*
 2. *The location of the proposed office or offices;*
 3. *The designation of the additional office or offices as trust offices or trust representative offices; and*
 4. *An affirmation that the laws of the jurisdiction where the office will be located permit the office to be maintained by the trust company;*
 - (b) *Furnish the commissioner with a copy of the resolution adopted by the board of directors authorizing the out-of-state office;*
 - (c) *Pay the filing fee, if any, prescribed by the commissioner;*
 - (d) *Commence business at the office no sooner than thirty-one (31) days after the date the commissioner receives notice as specified by paragraph (a) of this subsection unless the commissioner specifies an earlier or later date. The thirty (30) day period of review may be extended by the commissioner if he or she determines the notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the Kentucky state trust company may establish or acquire and maintain the additional office only on prior written approval by the commissioner. The commissioner may deny approval of the additional office if the commissioner finds that:*
 1. *The Kentucky state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 2. *The proposed office would be contrary to the public interest; or*
 3. *The proposed expansion is not authorized by applicable law.*
- (6) *A Kentucky state trust company acquiring an office in this state or in any other state shall provide evidence to the commissioner that all fiduciary obligations and liabilities of the trust company being acquired have been properly discharged or assumed. An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.*

➔SECTION 4. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *An out-of-state trust company may establish or acquire and maintain a trust office or a trust representative office in this state only if trust companies chartered under the laws of Kentucky are permitted to establish or acquire and maintain offices, and engage in substantially similar activities permissible for out-of-state trust companies as established in Section 3 of this Act, in the state where the out-of-state trust company has its principal office. An out-of-state trust company that establishes or acquires and maintains a trust office or trust representative office in Kentucky pursuant to this section may conduct any activity in Kentucky that would be authorized under the laws of this state for a Kentucky state trust company.*
- (2) *An out-of-state trust company:*

- (a) *May, at its trust office or offices in Kentucky, act as a fiduciary in Kentucky, and may conduct any activity at the trust office or offices that would be authorized under the laws of this state for a Kentucky state trust company; and*
- (b) *May not, at its trust representative office or offices in Kentucky, act as a fiduciary, but it may otherwise engage in other fiduciary related activities including but not limited to marketing, soliciting, and operating through the trust representative office, but only to the extent the home state of the out-of-state trust company permits trust companies chartered in Kentucky to engage in similar activities in the other state.*
- (3) *An out-of-state trust company shall have and continuously maintain a trust office or trust representative office in this state.*
- (4) (a) *An out-of-state trust company desiring to establish or acquire and maintain a trust office in this state shall:*
 - 1. *Provide, or cause its home state regulator to provide, on a form prescribed by the commissioner written notice of the proposed transaction. This form shall be provided to the commissioner on or after the date on which the out-of-state trust company applies for approval to establish or acquire and maintain an office in this state. The written notice shall set forth:*
 - 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 copy of the resolution adopted by the board of directors of the out-of-state trust company authorizing the office;*
 - 3. *Pay the filing fee, if any, prescribed by the commissioner;*
 - 4. *Commence business at the trust office no sooner than sixty-one (61) days after the date the commissioner receives the notice specified by this subsection, unless the commissioner specifies an earlier or later date. With respect to an out-of-state trust company that is not a depository institution and for which the commissioner shall have conditioned approval upon satisfaction by the out-of-state trust company of any requirement applicable to a Kentucky state trust company, the out-of-state trust company must have satisfied those conditions and provided the commissioner with satisfactory evidence thereof. The sixty (60) day period of review may be extended by the commissioner if he or she determines the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust company may establish or acquire and maintain the office only on prior written approval of the commissioner. The commissioner may deny approval of the office if the commissioner finds that:*
 - a. *The out-of-state trust company lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness;*
 - b. *The proposed office is contrary to the public interest; or*
 - c. *The proposed expansion is not authorized under applicable law.*
- (5) *An out-of-state trust company acquiring an office shall:*
 - (a) *Provide evidence to the commissioner of compliance with:*
 - 1. *Requirements of the trust company's home state regulator and home state law for establishing or acquiring and maintaining the office; and*
 - 2. *Requirements to qualify as a foreign corporation under KRS Chapter 271B; and*
 - (b) *Provide evidence to the commissioner that all fiduciary obligations and liabilities of the trust company being acquired have been properly discharged or assumed. An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.*

Fulfillment of the requirements of this subsection shall not result in the establishment of an office of an out-of-state trust company in Kentucky until the commissioner, acting within sixty (60) days after receiving notice pursuant to this subsection, has certified to the home state regulator of the proposed out-of-state trust company that the requirements of this section have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to this subsection have been satisfied.

- (6) *An out-of-state trust company that establishes or acquires and maintains an office in this state shall confirm in writing to the commissioner prior to commencing to do business in this state, and at least annually thereafter, that for so long as it maintains a trust office or trust representative office in this state it will comply with all applicable laws of this state.*

➔Section 5. KRS 286.3-450 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 commissioner or by an examiner appointed by the commissioner. 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 commissioner, deputy commissioner, 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 commissioner may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The commissioner 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 commissioner may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The commissioner 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, ***any trust office or trust representative office of an out-of-state trust company, or any trust office or trust representative office of a Kentucky state trust company in any host state.*** The commissioner 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 commissioner 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, ***any trust office or trust representative office of an out-of-state trust company, or any trust office or trust representative office of a Kentucky state trust company in any host state.*** Information produced or provided under this section shall be considered confidential as provided in KRS 286.3-470.

➔Section 6. KRS 286.3-920 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 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 286.3-480. The applicant shall also comply with the

applicable provisions of KRS 286.3-180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).

- (3) An out- of- state state bank may establish, maintain, and operate one (1) or more branches in Kentucky in accordance with an interstate merger transaction in which the out- of- state state bank is the resulting bank in accordance with the requirements of Kentucky laws and administrative regulations. If the laws of the home state of the out- of- state bank place more restrictive terms or requirements on Kentucky state banks seeking to acquire and merge with a bank in that state, the interstate merger of the out- of- state bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks in that state. 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 286.3-480, 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 286.3-180(2) and the commissioner shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).
- (4) No interstate merger transaction under subsection (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 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) 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.
 - (b) *A branch office of an out-of-state bank may conduct any fiduciary activities that are authorized under the laws of this state for banks, provided that a branch office of a Kentucky bank is permitted, pursuant to the laws of the state under which the out-of-state bank is organized to engage in substantially similar activities.*
- (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.

Signed by Governor March 17, 2011.