

CHAPTER 152

(HB 726)

AN ACT relating to the regulation of financial institutions.

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

➔Section 1. KRS 286.1-011 is amended to read as follows:

- (1) There is created within the Public Protection Cabinet a Department of Financial Institutions~~[, which shall be]~~ headed by a commissioner~~[of financial institutions]~~, who shall be:
 - (a) The executive head of the department; and~~[shall be]~~
 - (b) Charged with the administration of the department.
- (2) (a) *The Governor, in accordance with KRS 12.040, shall appoint as commissioner a person knowledgeable in banking with not less than three (3) years of banking experience.*
 - (b) *As used in this subsection, "banking experience" means service as:*
 1. *An executive officer in a bank with its principal office located in Kentucky; or*
 2. *An executive with policy making authority in a state or federal agency having regulatory authority over an insured financial institution or another financial institution that is regulated by the department.*
- (3) (a) *With prior written approval of the Governor, the secretary of the Public Protection Cabinet may appoint a deputy commissioner.*
 - (b) *The deputy commissioner shall be vested with all of the powers, and perform all of the duties, of the commissioner:*
 1. *During the absence or inability of the commissioner;*
 2. *At other times as the commissioner may instruct; or*
 3. *During any vacancy in the office of the commissioner.*
- (4) (a) *The commissioner shall devise a seal for the department, which shall be renewed whenever necessary.*
 - (b) *A description and impression of the seal shall be:*
 1. *Approved by the Governor; and*
 2. *Filed, together with a certificate of approval from the Governor, in the office of the Secretary of State.*
- (5) The department~~[of Financial Institutions]~~ shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering, and licensing of:
 - (a) *Persons under this chapter;*~~[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]~~
 - (b) *Securities and persons under KRS Chapter 292.*
- ~~(6)~~~~(3)~~ (a) There are established within the department~~[of Financial Institutions]~~ the following divisions:
 - 1.~~[(a)]~~ ~~The Division of Depository Institutions[, which shall be headed by a director appointed by the secretary of the Public Protection Cabinet in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the director];~~
 - 2.~~[(b)]~~ ~~The Division of Non-Depository Institutions[, which shall be headed by a director appointed by the secretary of the Public Protection Cabinet in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the director]; and~~

3. ~~{(c)}~~ The Division of Securities ~~{, which shall be headed by a director appointed by the secretary of the Public Protection Cabinet in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the director.}~~

(b) ***Each division shall be headed by a director appointed by the secretary of the Public Protection Cabinet in accordance with KRS 12.050.***

~~{(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 2. KRS 286.1-013 is amended to read as follows:

(1) There is created a Financial Institutions Board ***whose duties shall be to advise the commissioner and the Governor as provided in this section.*** The board shall consist of:

(a) Twelve (12) ***voting*** members appointed by the Governor, who shall serve terms of four (4) years; ***and***

(b) ***The commissioner as a nonvoting ex officio member, who shall serve as chair of the board*** ~~{, except the initial terms shall be established as hereafter provided.}~~

(2) ~~{It is recommended that }~~ The ***voting*** board ***member*** appointments made by the Governor ***shall consist of*** ~~{be selected from the following.}~~

(a) Three (3) members selected from the banking industry regulated by the department 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) ***One (1) member selected from an industry regulated by the department that is not represented in another capacity on the board; and***

(f) Three (3) members selected from the public at large who are ***residents of Kentucky and*** 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 commissioner, who shall also serve as chairman of the board.}~~

(3) ~~{(2)}~~ All members of the board from ***an*** ~~{the banking}~~ industry ***regulated by the department*** ~~{, securities industry, credit union industry, consumer finance, or industrial loan industry}~~ shall be persons:

(a) With practical experience in the industry so represented; and

(b) Currently serving at the executive level of that industry at the time of their appointment.

(4) ~~{(3)}~~ (a) ~~{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.

(b) Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.

(5) ~~{(4)}~~ No member of the board, other than the commissioner, shall serve more than two (2) consecutive terms on the board.

(6) ~~{(5)}~~ (a) The board shall ~~{first}~~ meet at the call of the Governor ***or chair***, ~~{and thereafter as the chairman shall determine}~~ at a time and place determined by the ***Governor or chair*** ~~{chairman}~~.

(b) The board may elect other officers for the conduct of its business.

(c) A majority of ***voting*** board members shall constitute a quorum. ~~{, and}~~

(d) ***If a quorum is present***, a decision ***of the board*** shall require the majority vote of those present.

(e) Each ***voting*** board member shall have one (1) vote, and voting by proxy ~~{is}~~ ~~{shall be}~~ prohibited.

(7) ~~{(6)}~~ ***Voting*** board members shall:

- (a) Receive one hundred dollars (\$100) per diem for each board meeting ~~[which]~~ they attend; and ~~[shall]~~
 - (b) Be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
- (8)~~(7)~~ The board shall:
- (a) Prepare and submit, at the Governor's request, ***the following recommendations:***
 - 1. A list of candidates qualified to serve as commissioner; ~~[and recommend to the Governor]~~
 - 2. A proposed salary for each nomination for commissioner; ***and***
 - 3. ~~[(b)] [Recommend to the Governor]~~ A proposed salary structure for other department staff in order to provide competitive salaries for recruitment and retention of staff;
 - ~~(b)~~~~(c)~~ Receive and comment on various reports relating to the department and its activities as submitted to the board by the commissioner or the Governor; and
 - ~~(c)~~~~(d)~~ Review, consider, and make recommendations to the commissioner on any matters referred to the board by the commissioner or the Governor.
- (9)~~(8)~~ In no event shall the board or its members interfere with the statutory duties of the commissioner, whose decisions shall be governed by law.

➔Section 3. KRS 286.1-020 is amended to read as follows:

- (1) The commissioner may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. ~~[The commissioner shall devise a seal for the department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.]~~
- (2) The commissioner ~~[of financial institutions]~~ and his or her ***designees*** ~~[deputies]~~ shall be allowed their necessary traveling and other expenses of conducting their office.
- (3) ~~[The commissioner of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304.]~~
- ~~(4) Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 286.3-105 relative to the leasing of motor vehicles, or of KRS 286.3-180 relative to the establishment of branches.~~
- ~~(5) The commissioner may designate the deputy commissioner, division directors, general counsel, or branch managers to sign documents under his or her instructions.~~
- (4) ***The department may accept any application or other document required to be filed with it in electronic format or in any other technology acceptable to the department.***

➔Section 4. KRS 286.1-440 is amended to read as follows:

- (1) (a) The commissioner shall appoint a sufficient number of examiners and assistant examiners to examine all institutions coming under the supervision of the department.
- (b) A salary schedule for examiners and assistant examiners shall be prepared by the commissioner and presented to the secretary of the Finance and Administration Cabinet for approval. ~~[In the event an advisory state banking board is established by law, the appointment and compensation of examiners and assistant examiners shall be with the advice of such board.]~~
- (2) The commissioner, the deputy commissioner, and each examiner shall take the constitutional oath of office.
- (3) (a) Neither the commissioner, nor the deputy commissioner, nor any examiner or assistant examiner shall be:
 - 1. Indebted, directly or indirectly, ~~[either]~~ as borrower, indorser, surety, or guarantor ~~[;]~~ to any ***financial institution*** ~~[bank or trust company]~~ under his ***or her*** supervision or subject to his ***or her*** examination; ~~[; nor shall he or she be]~~

2. A director, officer, or employee *of a financial institution under his or her supervision or subject to his or her examination*; ~~in such bank or trust company, nor engage~~ or
 3. **Engaged, or** become interested, in the:
 - a. Sale of securities as a business; or ~~in the~~
 - b. Negotiation of loans for others.
- (b) *Any financial institution to which any person becomes indebted in violation of this subsection shall immediately, upon notice of the violation or possible violation, report the fact to:*
1. *The commissioner; or*
 2. *If the debtor is or may be the commissioner, the secretary of the Public Protection Cabinet.*
- (c) *Subject to paragraph (d) of this subsection, any person who violates this subsection may be removed from office.*
- (d) *An order of removal under paragraph (c) of this subsection shall not be issued without notice to the person, opportunity for a hearing, and written findings of fact and conclusions of law in accordance with KRS Chapter 13B.*
- (4) No person shall be assigned to examine the affairs of any bank or trust company in a county in which he *or she* holds stock in either a state or national bank or trust company.
- (5) (a) The commissioner may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or the branch of an out-of-state ~~state~~ bank operating in this state to:
1. Engage the services of the agency's examiners at a reasonable rate of compensation; ~~or to~~
 2. Provide the services of the commissioner's examiners to the agency at a reasonable rate of compensation.
- (b) Any contract entered into pursuant to this subsection shall be deemed a sole source contract under the provisions of KRS 45A.095.

➔Section 5. KRS 286.1-485 is amended to read as follows:

All fees collected and paid into the State Treasury under the provisions of *this chapter and KRS Chapter* ~~KRS Chapters~~ 292 ~~and 366~~ and of Subtitles 1, 2, 3, 4, 5, 6, 7, and 8 of ~~KRS Chapter 286~~, or any *other statute administered* ~~industry regulated~~ by the department, shall be:

- (1) Credited to a revolving trust or agency fund account, as provided in KRS 45.253, for the department; ~~of Financial Institutions and shall be~~
- (2) Separately accounted for; and ~~shall be~~
- (3) Used solely for the administration and enforcement of said KRS chapters *and statutes*.

➔SECTION 6. A NEW SECTION OF SUBTITLE 2 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

The provisions of this chapter shall be interpreted and applied:

- (1) *To the fullest extent practicable under law; and*
- (2) *In a manner consistent with applicable:*
 - (a) *Federal laws and regulations; and*
 - (b) *Policies and orders of federal regulatory agencies.*

➔Section 7. KRS 286.2-015 is amended to read as follows:

- (1) Except as provided in KRS 41.470 to 41.476 and 41.480, *and subsection (3) of this section*, all political subdivisions of the Commonwealth shall be prohibited from enacting and ~~from~~ enforcing ordinances, resolutions, and regulations pertaining to the financial or lending activities of persons or entities *that* ~~which~~:
 - (a) Are subject to:
 1. The jurisdiction of the department; or

2. The provisions of this chapter;
- (b) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, ~~the Office of Thrift Supervision,~~ the National Credit Union Administration, the Farm Credit Administration, the Federal Deposit Insurance Corporation, or the United States Department of Housing and Urban Development; or
- (c) Originate, purchase, sell, assign, securitize, assist, facilitate, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons or entities referred to in paragraph (a) or (b) of this subsection.
- (2) The requirements of this section shall apply to all ordinances, resolutions, or regulations pertaining to **financial or** lending activities, including any ordinances, resolutions, or regulations **that:** ~~which~~
- (a) Limit or disqualify persons or entities from doing business with a political subdivision based upon financial or lending activities; or ~~the imposition of~~
- (b) **Impose** additional reporting requirements or other obligations on ~~such~~ persons or entities **referred to in subsection (1) of this section** seeking to do business with a political subdivision.
- (3) ~~Any provision of this chapter preempted by federal law with respect to a national bank or federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or federal savings association.~~
- (4) ~~The provisions of this chapter shall be interpreted and applied to the fullest extent practicable in a manner consistent with applicable federal laws and regulations and with applicable policies and orders of federal regulatory agencies and shall not be deemed to constitute an attempt to override federal law.~~
- (5) ~~Nothing in this section shall be interpreted as preventing the enforcement of ordinances, regulations, or resolutions of political subdivisions of the Commonwealth pertaining to civil rights.~~

➔Section 8. KRS 286.2-105 is amended to read as follows:

- (1) **As used in this section:**
- (a) **"Interested person" means a:**
1. **Lessee's surviving spouse, adult child, or parent;**
 2. **Person named as the personal representative in a copy of a purported will of a lessee produced by the person;**
 3. **Person designated by a lessee in a writing that is:**
 - a. **Acceptable to a lessor; and**
 - b. **Filed with a lessor before the death of a lessee; or**
 4. **Person named in a court order to examine the contents of a safe deposit box for any purpose listed in subsection (2) of this section;**
- (b) **"Lessee" means a person who contracts with a lessor for the use of a safe deposit box;**
- (c) **"Lessor" means any of the following entities that rent safe deposit boxes:**
1. **A state or national bank, bank holding company, trust company, savings and loan association, savings and loan association holding company, credit union, or wholly owned subsidiary of any of the foregoing; or**
 2. **A safe deposit company; and**
- (d) **"Safe deposit box" means a safe deposit box, vault, receptacle, or other safe deposit facility maintained by a lessor that may be used for the safekeeping and storage of property and documents.**
- (2) (a) If **an interested person presents** satisfactory proof of the death of ~~a~~ ~~the~~ lessee ~~is presented~~ and the interested person possesses a key to the lessee's safe deposit box, a lessor shall permit ~~the~~ ~~an~~ interested person to open and examine the contents of ~~the~~ ~~a~~ safe deposit box ~~leased by a decedent~~ in the presence of an employee of the lessor for **any or all** ~~one (1) or both~~ of the following purposes:
1. ~~(a)~~ To conduct a will search; ~~or~~ ~~and~~

2. ~~(b)~~ To obtain any document purporting to:

- a. Be a deed to a burial plot; or ~~to~~
- b. Give funeral or burial instructions.

(b) *For purposes of this subsection, the following shall be considered satisfactory proof of the death of a lessee:*

1. *A death certificate;*
2. *A notice or indication of death from a governmental agency, funeral home, or hospital; or*
3. *Any other document that a reasonable person would rely on as an indication of death.*

~~(3)~~ ~~(2)~~ If ~~a~~ ~~the~~ safe deposit box is opened for *any or all of the purposes listed in subsection (2) of this section* ~~the purpose of conducting a will search~~, an employee of the lessor shall remove any document that appears to *satisfy the purpose or purposes*, ~~be a will and~~ make a true and correct machine copy thereof, replace the copy *or copies* in the box, and then deliver the original *document or documents* ~~thereof~~ to the *interested* person requesting the search.

~~(3)~~ ~~If the safe deposit box is opened for the purpose of obtaining any document purporting to be a deed to a burial plot or to give funeral or burial instructions, the employee of the lessor shall make a true and correct machine copy thereof, replace the copy in the box, and then deliver the original thereof to the person requesting the search.~~

(4) *This section shall not be construed to authorize the removal of any safe deposit box* ~~No~~ contents ~~of a safe deposit box~~ other than a will, ~~and~~ a document purporting to be a deed to a burial plot, *and a document giving* ~~or to give~~ funeral or burial instructions ~~may be removed under this section~~.

➔ Section 9. KRS 286.2-670 is amended to read as follows:

(1) (a) *As used in this subsection, a "foreign financial institution" means any bank, bank holding company, trust company, savings and loan association, savings and loan association holding company, credit union, or wholly owned subsidiary of any of the foregoing, that is organized under the laws of another state or of the United States.*

(b) Except as provided in subsection (2) of this section, a foreign financial institution shall not be considered to be doing, transacting, or carrying on business in this state, *or be required to qualify to do business in this state*, solely by reason of engaging in any or all of the following activities, either on its own behalf or as a trustee of a pension plan, employee's profit-sharing or retirement plan, or testamentary or inter vivos trust:

1. ~~(a)~~ The lending of money, or the acquisition by purchase, by contract to purchase, by making of advance commitments to purchase, or by assignment to it of loans, including construction loans, or any interest in loans, secured in whole or in part by mortgages, deeds of trust, or other forms of security on real or personal property in this state, if ~~the~~ ~~such~~ activities are carried on from outside this state by the ~~lending~~ institution or within this state by independent agencies on behalf of ~~the~~ ~~said foreign lending~~ institution;

2. ~~(b)~~ The receipt of principal and interest on ~~any~~ ~~such~~ loans *referenced in subparagraph 1. of this paragraph*;

3. ~~(c)~~ The making of physical inspections and appraisals of real or personal property ~~that~~ ~~which~~ secures or is proposed to secure any loan by an officer or employee of ~~the~~ ~~a foreign lending~~ institution if the officer or employee making any physical inspections and appraisals is not a resident of and does not maintain his *or her* place of business in this state;

4. ~~(d)~~ The ownership of any loans and the enforcement of any loans by trustee's sale, judicial process, or deed in lieu of foreclosure, or otherwise;

5. ~~(e)~~ The modification, renewal, extension, transfer, or sale of loans, ~~or~~ the acceptance of additional or substitute security *for loans*, ~~therefor or~~ the full or partial release of ~~the~~ security *for loans*, ~~therefor~~ or the acceptance of substitute or additional obligors *on loans* ~~thereon~~ if the activities are carried on from outside this state by the ~~lending~~ institution or carried on within this state by independent agencies;

6. ~~(f)~~ The maintaining and defending of any action or suits relating to loans, mortgages, deeds of trust, security instruments or related agreements, or activities referred to *in this section* ~~herein~~ or incidental thereto;
7. ~~(g)~~ The engaging, by contractual arrangement, of a corporation, firm, or association, qualified to do business in this state, which is not a subsidiary or parent of the ~~lending~~ institution or ~~which is not~~ under common management with the ~~lending~~ institution, to make collections and to service loans in any manner whatsoever, including:
- a. The payment of ground rents, taxes, assessments, insurance, and the like; and
 - b. The making *and performance of*, on behalf of the ~~lending~~ institution, ~~of~~ physical inspections and appraisals of real or personal property securing, *or proposed to secure*, any loans ~~or property which is proposed to secure any loans, and the performance of any such engagement~~;
8. ~~(h)~~ The acquisition of title to ~~the~~ real or personal property covered by any mortgages, deeds of trust, or other security instrument, by trustees, pledgees, or judicial sales, ~~or~~ by deed in lieu of foreclosure, or for the purpose of transferring title to any federal agency or instrumentality as the insurer or guarantor of any loans, the maintenance or defense of any action or suit relating to the possession of the property, and the retention of title to *the* ~~any real or personal~~ property as acquired pending the orderly sale or other disposition thereof; or
9. ~~(i)~~ The maintenance of ~~bank~~ accounts in banks *or credit unions*, authorized or licensed to do and transact *business as a bank or credit union* ~~banking business in this state~~.
- (2) The provisions of this section shall be inapplicable *for purposes of* ~~in~~ determining whether, *and to what extent*, a financial institution is *subject to taxation under state law* ~~regularly engaged in business in this Commonwealth within the meaning of that phrase as used in KRS 136.500 to 136.575~~.

➔Section 10. KRS 286.3-010 is amended to read as follows:

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

- (1) *"Articles of incorporation" means the organizing records of a corporation filed and recorded with the Secretary of State in accordance with KRS Chapter 271B or 275;*
- (2) "Bank" or "state bank" means any bank *or combined bank and trust company* which is now or may hereafter be organized under the laws of this state ~~or a combined bank and trust company~~;
- ~~(3)~~ ~~(2)~~ *"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;*
- (4) *"Capital stock" means, at any particular time, the sum of:*
 - (a) *The par value of all shares of a corporation having a par value that have been issued;*
 - (b) *The amount of the consideration received by a corporation for all shares of the corporation that have been issued without par value except any part of the consideration that has been allocated to surplus in a manner permitted by law; and*
 - (c) *Amounts not included in paragraph (a) or (b) of this subsection that have been transferred to stated capital of a corporation, whether through the issuance of stock dividends, resolution of the board of directors under applicable corporate law, or otherwise by law;*
- (5) *"Charter" means the record or records issued to a state bank, trust company, out-of-state bank, out-of-state trust company, or national bank by a chartering authority that authorizes the bank or trust company to transact a banking, trust, or combined banking and trust business;*
- (6) *"Corporation" means either a for-profit corporation or a for-profit limited liability company;*
- (7) *"Director" means a member of the board of directors;*
- (8) *"Dividends" means a distribution of money, stock, or other property to shareholders of a corporation;*
- (9) *"Home state" means:*

- (a) *With respect to a state bank, trust company, out-of-state bank, or out-of-state trust company, the state in which the bank or trust company is organized; and*
- (b) *With respect to a national bank, the state in which the main office of the bank is located;*
- (10) *"Home state regulator" means, with respect to an out-of-state bank or out-of-state trust company, the bank or trust supervisory agency of the state in which the bank or trust company is organized;*
- (11) *"Host state" means a state, other than its home state, in which:*
 - (a) *A bank or trust company maintains, or seeks to establish and maintain, a branch or office; or*
 - (b) *A trust company conducts, or seeks to conduct, trust business;*
- (12) *"National bank" or "national banking[bank] association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;*
- (13){(3)} *"Out-of-state bank" means a bank organized[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;~~
- (23) ~~"Dividends" means a distribution of money, stock, or other property to shareholders of a corporation;]~~
- (14)~~(24)]~~ "Out-of-state trust company" means a *corporation*~~[trust company]~~ that is *organized*~~[chartered]~~ under the laws of a state other than Kentucky *to engage in a trust business*~~;~~~~[and]~~
- (15) *"Shares" means the shares of stock or the unit of equity into which the proprietary interests of a corporation are divided;*
- (16) *"Stock" means a corporation's shares;*
- (17) *"Stockholder" or "shareholder" means an owner of a corporation's shares;*
- (18) *"Surplus" means, at any particular time, the sum of:*
- (a) *The amount of consideration received by a corporation for all shares issued without par value that has not been allocated to capital stock;*
 - (b) *The amount of consideration received by a corporation in excess of par value for all shares with a par value; and*
 - (c) *Amounts authorized by a corporation that have been transferred from undivided profits to surplus;*
- (19) *"Trust company" means any trust company which is now or may hereafter be organized under the laws of this state;*
- (20)~~(25)]~~ "Trust representative office" means an office at which a trust company *or an out-of-state trust company* has been authorized by the commissioner to engage in a trust business other than acting as a fiduciary; *and*
- (21) *"Undivided profits" means the composite of a corporation's net retained earnings from current and prior years' operations.*

➔Section 11. KRS 286.3-020 is amended to read as follows:

- (1)
 - (a) The commissioner shall approve an application for a bank,~~[or]~~ trust company, *or combined bank and trust company* charter upon a finding that the public convenience and advantage will be served by opening~~[or]~~ the proposed institution.
 - (b) To determine whether public convenience and advantage will be served, the commissioner shall consider *whether*~~[the following factors]:~~
 - 1.~~(a)]~~ ~~[Whether]~~ Conditions in the community indicate reasonable assurance of successful operation for the proposed institution;
 - 2.~~(b)]~~ ~~[Whether]~~ The *proposed institution's* organizational and capital structure and amount of capitalization is adequate for the business plan; and
 - 3.~~(c)]~~ ~~[Whether]~~ The officers and directors *of the proposed institution* have sufficient experience, ability, standing, and reputation to provide reasonable assurance of successful operation and of compliance with the law.
- (2) Before any *bank, trust company, or combined bank and trust company commences*~~[institution shall commence]~~ business, *except business which is incidental or preliminarily necessary to its organization or as otherwise provided in subsection (3) of this section*, it shall:
 - (a) Obtain from the commissioner a charter authorizing it to commence doing business;~~[and shall comply with the following requirements:]~~
 - (b)~~(a)]~~ *Ensure that* the oaths of all directors have been taken *in accordance with Section 15 of this Act; and*
 - (c)~~(b)]~~ *Provide*~~[The commissioner has received]~~ satisfactory proof *to the commissioner* that:

1. The accounts of the ~~banking~~ institution's depositors will be insured by the Federal Deposit Insurance Corporation; ~~and~~
2. ~~{(c)} [The commissioner has received satisfactory proof that]~~The institution has subscribed and paid in the required capital; and
3. *The institution* has otherwise fully complied with all pertinent laws and administrative regulations.

- (3) *In the event that an institution for which a charter under this subtitle 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 commissioner may waive all or any part of the requirements of this subtitle.*

➔Section 12. KRS 286.3-025 is amended to read as follows:

- (1) *A person shall not transact banking or trust business in this state unless the person:*

- (a) *Has been issued a charter under this subtitle to transact the business;*
- (b) *Is transacting business authorized under Section 9 of this Act; or*
- (c) *Is otherwise specifically authorized by the laws of this state or of the United States to transact the business in this state.*

- (2) *An out-of-state bank or national bank may lend money in this state*~~[An institution shall not transact any business, except business which is incidental or preliminarily necessary to its organization, until it has been issued a charter under KRS 286.3-020].~~

➔Section 13. KRS 286.3-040 is amended to read as follows:

- (1) Any five (5) or more natural persons may organize a ~~banking~~ corporation *for the purpose of obtaining a charter to transact business as a:*

- (a) *Bank;*
- (b) *Trust company; or*
- (c) *Combined bank and trust company.*

- ~~(2) [Any five (5) or more natural persons may organize a corporation for the purpose of conducting a trust business.~~

- ~~(3) Any five (5) or more natural persons may organize a corporation for the purpose of conducting a combined banking and trust business.~~

- ~~(4)]The board of directors of a *bank* ~~[banking corporation], trust *company* [corporation], or combined bank and trust *company* [corporation] shall not be [no] less than the [required] number of organizers *required for the corporation under subsection (1) of this section.*~~~~

➔Section 14. KRS 286.3-050 is amended to read as follows:

- (1) Before filing *and recording* the articles of incorporation *or amendments to the articles of incorporation of a proposed or existing bank, trust company, or combined bank and trust company, as provided under the general corporation or limited liability laws of this state*~~[of any financial institution mentioned in KRS 286.3-040], the organizers of the proposed bank, trust company, or combined bank and trust company, or the bank, trust company, or combined bank and trust company, as applicable, shall present a copy of the [their] proposed articles or amendments to the commissioner for approval.~~

- (2) *The Secretary of State shall not accept the articles of incorporation of any proposed bank, trust company, or combined bank and trust company, or amendments to the articles of incorporation of any existing bank, trust company, or combined bank and trust company, for filing and recording unless the articles or amendments have been approved in writing by the commissioner*~~[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 commissioner may waive all or any part of the requirements of this subtitle].~~

- ~~(3) If the commissioner determines that it is expedient and desirable to permit the proposed corporation to engage in business, the commissioner 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 286.3-040 shall be approved by the commissioner before filing with the Secretary of State.~~

➔Section 15. KRS 286.3-060 is amended to read as follows:

(1) ~~A newly chartered state bank or trust company shall not~~ ~~Before any financial institution mentioned in KRS 286.3-040 may~~ transact any banking or trust business ~~until~~ each director of the institution *executes, in writing, [shall take]* an oath *of office* which shall:

(a) State in substance:

1. ~~[(a)]~~ That *he or she* ~~[such director]~~ is a citizen of the United States, and the State of Kentucky, or, if not, the place of his *or her* residence;

2. ~~[(b)]~~ That he *or she* will faithfully discharge the duties of *the* ~~[his]~~ office and administer the affairs of the institution, so far as the duties of *the* ~~[his]~~ office require; *and*

3. ~~[(c)]~~ That he *or she* will uphold the laws of *Kentucky* ~~[the state]~~, and particularly the banking and trust laws; ~~[-]~~

~~[(2)]~~ ~~[The oath shall]~~ Be *executed and acknowledged* ~~[Taken]~~ before any officer authorized to administer oaths; ~~[-]~~ and ~~[- shall]~~

(c) Be forwarded to the commissioner for filing.

~~[(3)]~~ (a) *The oath of office required under subsection (1) of this section shall be executed or reexecuted, as applicable,* upon the election of any subsequent director ~~[-]~~ or reelection of any director. ~~[- the oath shall be taken and shall be]~~

(b) *Any oath of office executed by a subsequent or reelected director shall be:*

1. Maintained by the *state bank or trust company*; and ~~[- be]~~

2. Subject to review at examination.

(3) (a) *Each officer and director of a state bank or trust company shall discharge the duties and responsibilities of his or her respective office or position in good faith and with the ordinary care and diligence as necessary and reasonable to administer the affairs of the state bank or trust company in a safe and sound manner.*

(b) *The provisions of this subsection and KRS 271B.8-300 apply to directors.*

(c) *The provisions of this subsection and KRS 271B.8-420 apply to officers.*

➔Section 16. KRS 286.3-070 is amended to read as follows:

(1) (a) The minimum capital stock of any newly chartered *state* bank or trust company shall be five million dollars (\$5,000,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the commissioner.

(b) *The minimum capital required under paragraph (a) of this subsection shall:*

1. *Be paid in full in money;*

2. *Be in the custody of the directors before the institution commences business; and*

3. *Not be designated as undivided profits.*

(c) *Not less than fifty percent (50%) of the minimum capital required under paragraph (a) of this subsection shall be designated as surplus.*

(2) (a) *A reduction in the capital stock of a state bank or trust company shall not be made until it has been approved by the commissioner. Any reduction made in violation of this paragraph shall be invalid.*

(b) *The commissioner shall not approve a reduction in capital stock unless he or she finds that:*

1. *The interest of the state bank's or trust company's creditors will not be prejudiced by the reduction; and*

2. *The reduction results in capital stock that is not less than the greater of the following:*

- a. *An amount that is not less than the amount that was required for organization; or*
 - b. *Two million five hundred thousand dollars (\$2,500,000).*
- (3) (a) *Any state bank or trust company may issue preferred capital stock of one (1) or more classes.*
- (b) *Preferred capital stock may be considered as part of the minimum capital stock required under this section, and in the case of existing corporations, shall be issued in the manner provided for increasing capital stock.*
- (c) *Unless expressly provided otherwise in this subtitle, the following shall be governed by KRS Chapter 271B:*
- 1. *The manner in which preferred capital stock is issued; and*
 - 2. *The rights and preferences of preferred capital stockholders.*
- (d) *The issue of preferred capital stock shall not be valid until the stated value of the issued stock has been paid in.*
- (e) *If any part of the capital stock of a state bank or trust company consists of preferred capital stock, the determination of whether or not the capital of the corporation is impaired, and the amount of the impairment, shall be based upon the stated value of the state bank's or trust company's stock, even though the amount that the preferred capital stockholders are entitled to receive in the event of retirement or liquidation is in excess of the stated value of the preferred capital stock.*

➔SECTION 17. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (3) of this section, the commissioner may, by administrative regulation or order, authorize banks to engage in any banking activity in which the banks could engage in were they operating as national banks at the time the authority is granted.*
- (2) *Any administrative regulation or order issued under subsection (1) of this section shall be:*
- (a) *Specifically limited to the activities, services, or products contained in the administrative regulation or order;*
 - (b) *Mailed to all banks regulated by the department;*
 - (c) *Retained by the department;*
 - (d) *Published on the department's website; and*
 - (e) *Searchable by index.*
- (3) *This section shall not:*
- (a) *Apply to activities prohibited under Subtitle 9 of KRS Chapter 304; or*
 - (b) *Be used to repeal, modify, or alter Section 24 of this Act, relating to the establishment of branches.*

➔Section 18. KRS 286.3-095 is amended to read as follows:

- (1) At least sixty (60) days prior to a change occurring in the outstanding voting stock of any *state* bank, ~~trust~~ trust company, *or bank holding company that owns or controls a state bank*, which will result in control, or in a change in the control, of the bank, ~~trust~~ trust company, *or bank holding company*, the proposed acquiring party or parties shall report such facts to the commissioner for approval unless the commissioner finds that:
- (a) The terms of the acquisition are not in accordance with the laws of this state; ~~trust~~
 - (b) The financial condition, or the competence, experience, and integrity, of the acquiring party or parties are such as will jeopardize the financial stability of the bank, *trust company, or bank holding company*; or
 - (c) The public convenience and advantage will not be served by the acquisition.
- (2) (a) As used in subsection (1) of this section, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the bank, ~~trust~~ trust company, *or bank holding company*.

- (b) A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than twenty-five percent (25%) of the outstanding voting stock shall not be considered a change of control.
- (c) If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control, ~~thereof~~ or to effect a change in ~~the~~ control ~~thereof~~, such doubt shall be resolved in favor of reporting the facts to the commissioner.
- (3) Whenever a bank makes a loan or loans, secured, or to be secured, by twenty-five percent (25%) or more of the outstanding voting stock of a bank, the president or other chief executive officer of the lending bank shall promptly report ~~that~~~~such~~ fact to the commissioner upon obtaining knowledge of ~~the~~~~such~~ loan or loans, ~~unless~~~~except that no report need be made in those cases where~~:
- (a) The borrower has been the owner of record of the stock for a period of one (1) year or more;~~;~~
- (b) The stock is that of a newly **chartered**~~organized~~ bank prior to its opening.
- (4) The reports required by subsections (1), (2), and (3) of this section shall contain the following information, *as applicable*, to the extent that it is known by the person making the report:
- (a) The number of shares involved;
- (b) The names of the sellers ~~{(or transferors)}~~;
- (c) The names of the purchasers ~~{(or transferees)}~~;
- (d) The names of the beneficial owners if the shares are registered in another name;
- (e) The purchase price;
- (f) The total number of shares owned by the ~~sellers~~~~seller~~ ~~{(or transferors)}~~, the purchasers ~~{(or transferees)}~~, and the beneficial owners, both immediately before and after the transaction;~~and~~
- (g) In the case of a loan:
1. The name of the borrower;
 2. The amount of the loan; and
 3. The name of the bank issuing the stock securing the loan and the number of shares securing the loan; ~~and~~;
- (h) ~~Any~~~~In addition to the foregoing, such~~ reports shall contain such other information as may be available to inform the commissioner of the effect of the transaction upon control of the bank, ~~or~~ trust company, **or bank holding company** whose stock is involved.
- (5) Whenever **control** ~~or~~~~such~~ a change **of control**~~as~~ described in subsection (1) of this section occurs, each bank, ~~or~~ trust company, **or bank holding company** shall report promptly to the commissioner any changes **to** or replacement of its chief executive officer or of any director occurring in the next twelve (12) month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

➔Section 19. KRS 286.3-100 is amended to read as follows:

(1) A bank may **do any or all of the following**:

- (a)~~{(1)}~~ Hold personal property that has been transferred to it as collateral for the payment of any debt;
- (b)~~{(2)}~~ Acquire and hold title to real estate ~~if~~~~provided~~:
- 1.~~{(a)}~~ The real estate is necessary or appropriate for the transaction of legitimate business; and
 - 2.~~{(b)}~~ **Except with prior written approval of the commissioner**, the cost of the real estate, including furniture and fixtures, **less accumulated depreciation** ~~does~~~~shall~~ not exceed forty percent (40%) of the **bank's** 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}~~;
- (c)~~{(3)}~~ Acquire and hold **title to real estate if**:

1. *The title is held* for not longer than ten (10) years; ~~and~~ ~~any~~
2. *The* real estate *is* conveyed to *the bank* ~~it~~ in satisfaction of debts:
 - a. Previously contracted in the course of its business; ~~it~~ or
 - b. That it *purchases* ~~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;~~

~~(d)(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 *et seq., as amended* ~~and amendments thereto~~;

~~(e)(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;

~~(f)(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 company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to *any or all of the following*:

1. ~~(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;
2. ~~(b)~~ Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or *dividends* ~~dividend~~ by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
3. ~~(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 instruments of indebtedness; *or*
4. ~~(d)~~ Any other obligations in which national *banks* ~~banking associations organized under the laws of the United States~~ are permitted to invest in directly;

~~(g)(8)~~ Purchase and hold shares of a bank service corporation, as that term is used in the Bank Service *Company* ~~Corporation~~ Act, ~~(12 U.S.C. sec. 1861 et seq., as amended)~~ ~~and any amendments thereto~~;

~~(h)(9)~~ Invest in *any or all of the following*:

1. ~~(a)~~ *Bonds of any federal home loan bank*;
2. Bonds or other interest-bearing obligations:
 - a. Of the United States; ~~it~~ or ~~those~~
 - b. For the payment of the principal and interest on which the faith and credit of the United States is pledged;
3. ~~(b)~~ Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or *dividends* ~~dividend~~ by any instrumentality presently or hereafter incorporated by authority of an Act of Congress; *or*
4. ~~(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;

~~(i)(10)~~ — ~~(a)~~ 1. Invest in ~~other~~ real estate in the bank's generally accepted banking market *if* ~~. 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 *does* ~~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.

2. *As used in this paragraph, "the bank's generally accepted banking market" means the bank's geographic banking market, as determined by the federal reserve bank in the federal reserve district in which the bank is located, at the time the investment is made; ~~and~~*
- (j)~~(b)~~ *Invest~~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 **by the bank if:** ~~and~~*
1. The investment is for the purpose of improving the real estate for sale; ~~and~~ ~~Any~~
 2. *The real estate ~~is~~ 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, ~~except~~~~with~~ the commissioner ~~may~~~~authorized to~~ extend the disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;*
- (k)~~(11)~~ *Own or operate, **either through the bank or a bona fide subsidiary of the bank, any or all of the following:***
1. A discount brokerage service ~~either through the bank or a bona fide subsidiary of the bank~~;
 - 2.~~(12)~~ ~~Own or operate~~ A travel agency ~~either through the bank or a bona fide subsidiary of the bank~~; ~~or~~
 3. *A courier service;*
- (l)~~(13)~~ *Invest, with the prior approval of the commissioner, in the capital stock or bonds of a trust company; ~~and~~*
- (m) *Engage, either through the bank or a bona fide subsidiary of the bank, in the sale of insurance; or*
- ~~(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.*
- (n)~~(15)~~ *Except for real estate provided in **paragraph (c) of this subsection** ~~subsection (3) of this section~~, acquire and hold for not more than one (1) year, or for an additional period allowed in writing by the commissioner, any assets taken as security for debts previously contracted in the ordinary course of business.*
- (2) Investments *made* in accordance with *subsection (1)(f) or (1)(h)2., 3., or 4.* ~~subsections (7) and (9)~~ of this section are subject to KRS 286.3-280 and 286.3-290.
- (3) (a) *Except as provided in paragraph (b) of this subsection, for purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used.*
- (b) For deep discount bonds or zero coupon bonds, accreted book value shall be used.
- (4) (a) *Except as provided in paragraph (b) of this subsection, when accounting for real estate acquired under subsections (1)(c) or (j) of this section, a bank shall comply with the other real estate owned, or OREO, accounting standards established under federal law, including federal regulations and other guidance, for national banks.*
- (b) *When accounting for real estate acquired under subsection (1)(c) of this section, a bank may, in lieu of complying with paragraph (a) of this subsection, elect to write down the acquisition at ten percent (10%) per year.*
- ➔Section 20. KRS 286.3-140 is amended to read as follows:
- (1) *Except as provided in subsection (2) of this section, a bank may ~~with the consent of a majority in number and interest of its stockholders,~~ amend its articles of incorporation or reorganize to permit it to engage in a trust business. ~~The stock of the old corporation, if unimpaired, may be converted into stock in the new corporation.~~*
- (2) *A bank that acts as a fiduciary under the authority of a permit obtained prior to May 31, 1938, under 1920 Ky. Acts ch. 128, may continue to act as a fiduciary under that Act.*
- (3)~~(2)~~ (a) Any bank ~~and~~~~or~~ trust company may consolidate *into a resulting combined bank and trust company.* ~~and~~

- (b) The consolidated corporation shall issue stock for an equivalent amount in value of the stock of the constituent corporations.
- (4)(3) (a) Upon written approval of the commissioner, a bank or trust company may transfer one (1) or more fiduciary accounts under its administration to an affiliate of the trust company or bank, as defined in KRS 286.3-230(6), located in *this state*~~the Commonwealth~~, if the transferring bank or trust company~~shall also~~:
- 1.~~(a)~~ Not later than thirty (30) days prior to the date of~~the~~ transfer~~of the fiduciary accounts~~, **sends the following, in writing**,~~send written notice~~ to the person or entity that was the recipient of the last *account status* report:
 - a. *Notice of the transfer; and*
 - b. *Notice that the person has a right*~~of the status of the account. The notice shall include notification of the recipient's rights~~ to object to the transfer in the probate division of District Court; and
 2. *Within ten (10) days after the date of transfer, files an affidavit recording the transfer in the District Court, probate division, of the county in which its principal office is located.*
- (b) *The notice required under paragraph (a)1. of this subsection* shall be deemed effective when mailed by the bank or trust company~~; and~~
- ~~(b) Within ten (10) days after the date of a transfer of the fiduciary accounts, file an affidavit recording the transfer in the District Court, probate division, of the county in which its main office is located.~~

➔Section 21. KRS 286.3-145 is amended 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 *other* trust business as permitted by Kentucky law or the applicable law of the state or foreign country; and
 - (b) ~~Shall~~~~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 *trust business at the office or offices as permitted by Kentucky law or the applicable law of the state or foreign country*~~fiduciary related activities~~, including but not limited to marketing, soliciting, and *operations*~~operating through the trust representative office as permitted by this section~~.
- (2) A ~~Kentucky state~~ trust company may conduct ~~any~~ *trust business in a state other than Kentucky or a foreign country, to the extent the* activities ~~at an office outside of this state that~~ are:
- (a) Permissible for *an out-of-state or a foreign*~~a~~ trust company *organized under the laws of*~~chartered by~~ the host state *or foreign country; and* ~~where the office of the Kentucky state trust company is located, except to the extent the activities are~~
 - (b) *Not* expressly prohibited by the laws of *this state*~~Kentucky or by any applicable law of the host state or foreign country~~.
- (3) (a) A ~~Kentucky state~~ trust company shall have and continuously maintain a principal office in this state.
- (b) *A trust company may establish, or acquire and maintain, additional trust offices or trust representative offices in this state, a state other than Kentucky, or a foreign country.*
- (4) (a) 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 *or offices, in addition to its principal office*, ~~in this state~~ shall:
- 1.~~(a)~~ File a written *application*~~notice~~ on a form prescribed by the commissioner, *which shall include*~~setting forth the following~~:
 - a.~~1-~~ The name of the ~~Kentucky state~~ trust company;
 - b.~~2-~~ The location of the proposed office or offices; ~~and~~
 - c.~~3-~~ The designation of the additional office or offices as trust offices or trust representative offices; *and*

- d. For any office or offices proposed to be located in a jurisdiction other than this state, an affirmation that the laws of the jurisdiction permit the office or offices proposed by the trust company;*
2. ~~(b)~~ Furnish the commissioner with a copy of the resolution adopted by the board of directors authorizing the *additional office or offices; and*
3. ~~(c)~~ Pay the filing fee, if any, prescribed by the commissioner;
- (b) ~~(d)~~
1. *An application made under paragraph (a) of this subsection shall be deemed approved on the thirty-first day* ~~Commence business at the office no sooner than thirty one (31) days~~ after the date the commissioner receives *the application* ~~notice as specified by paragraph (a) of this subsection~~, unless the commissioner:
 - a. Specifies an earlier or later date; *or*
 - b. *Extends the review period under subparagraph 2. of this paragraph.*
 2. The *commissioner may extend the thirty (30) day review period* ~~of review~~ *provided under this paragraph* ~~may be extended by the commissioner~~ if he or she determines ~~the notice raises issues~~ that ~~require~~ additional information or ~~additional~~ time for analysis *is required.*
 3. If the ~~period of~~ review *period* is extended, the ~~Kentucky state~~ trust company *shall not be authorized to commence business at the proposed office or offices until the trust company receives* ~~may establish or acquire and maintain the additional office only on prior~~ written approval *from* ~~by~~ the commissioner.
- (c) The commissioner may deny *an application for an* ~~approval of the~~ *additional office or offices* 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 *or offices* would be contrary to the public interest; or
 3. The proposed expansion is not authorized by applicable law.
- (5) (a) ~~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; and~~
 - (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, or a foreign country shall provide evidence to the commissioner that all fiduciary obligations and liabilities of the trust company being acquired have been properly discharged or assumed.~~

~~(b) An acquiring trust company shall succeed by operation of law to all of the rights, privileges, and obligations of the selling trust company.~~

➔Section 22. KRS 286.3-146 is amended to read as follows:

(1) An out-of-state trust company may *do any or all of the following, to the extent permitted under this section:*

~~(a) Conduct trust business in this state, including but not limited to acting as a trustee, personal representative, executor, administrator of any kind, guardian, conservator, or in any other like or similar fiduciary capacity, whether the appointment is by law, will, deed, trust, mortgage, court order, or otherwise, to the extent the activities are authorized for a trust company organized under the laws of this state; or~~

~~(b) Establish, or acquire and maintain, a trust office or a trust representative office in this state [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 KRS 286.3-145, in the state where the out of state trust company has its principal office].~~

(2) (a) An out-of-state trust company *shall not conduct an activity authorized under subsection (1) of this section unless:*

1. A trust company organized under the laws of this state is permitted under the laws of the out-of-state trust company's home state to conduct a substantially similar activity in that state; and

2. The trust company has filed with the commissioner, in a form and format prescribed by the commissioner in an administrative regulation promulgated in accordance with KRS Chapter 13A:

a. If the trust company has an agent for service of process in this state:

i. The name, physical address, telephone number, and electronic mail address of the trust company's agent in this state for service of process; and

ii. A certification that the trust company will, at least five (5) days prior to any change in the information provided under subpart i. of this subdivision, notify the commissioner of the change and update the information;

b. If the trust company does not have an agent for service of process in this state, an irrevocable consent appointing the Secretary of State as the trust company's attorney to receive lawful process issued against the trust company in this state; and [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]

c. The confirmation required under subsection (6) of this section.

~~(b) If any out-of-state trust company engages in conduct in this state without making the service of process filing required under paragraph (a)2. of this subsection, the trust company shall be subject to service of process as provided in KRS 454.210.~~

~~(c) Notwithstanding this section, a court of this state may exercise jurisdiction over an out-of-state trust company on any other basis authorized in the Kentucky Revised Statutes or by the Rules of Civil Procedure.~~

~~(3)(2)}~~ An out-of-state trust company:

(a) May, at its trust office or offices in Kentucky, act as a fiduciary in Kentucky [;} and *engage in other trust business, to the extent the activities are [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 organized under the laws of this state; and*

- (b) ~~Shall~~~~May~~ not, at its trust representative office or offices in Kentucky, act as a fiduciary, but it may ~~otherwise~~ engage in other *trust business at the office or offices*, ~~fiduciary-related activities~~ including but not limited to marketing, soliciting, and *operations, to the extent the activities are authorized for a trust company organized under the laws of this state* ~~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, *an office or offices* ~~a trust office~~ in this state shall:

1. *File a written application on a form prescribed by the commissioner, which shall include* ~~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. A copy of the resolution adopted by the board of directors of the out-of-state trust company authorizing the office *or offices*; and
- b. *A notice from the out-of-state trust company's home state regulator that the proposed transaction is authorized by that regulator; and*

3. Pay the filing fee, if any, prescribed by the commissioner. ~~;~~

- (b) ~~1.~~~~4.~~ *An application made under paragraph (a) of this subsection shall be deemed approved on the sixty-first day* ~~Commence business at the trust office no sooner than sixty one (61) days~~ after the date the commissioner receives the *application* ~~notice specified by this subsection~~, unless the commissioner:

- a. Specifies an earlier or later date; *or*
- b. *Extends the review period under subparagraph 3. of this paragraph.*

2. With respect to an out-of-state trust company that is not a depository institution, ~~and for which~~ the commissioner *may condition* ~~shall have conditioned~~ approval *of any application* upon:

- a. Satisfaction by the out-of-state trust company of any requirement applicable to a ~~Kentucky state~~ trust company *organized under the laws of this state; and*
- b. *The out-of-state trust company furnishing* ~~the out-of-state trust company must have satisfied those conditions and provided~~ the commissioner with satisfactory evidence *that the conditions required for approval have been satisfied* ~~thereof~~.

3. The *commissioner may extend the* sixty (60) day *review period* ~~of review~~ *provided under this paragraph* ~~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 *is required*.

4. If the *review period* ~~of review~~ is extended, the out-of-state trust company *shall not be authorized to commence business at the proposed office or offices until the trust company receives* ~~may establish or acquire and maintain the office only on prior~~ written approval of the commissioner.

- (c) The commissioner may deny *an out-of-state trust company's application for an* ~~approval of the~~ office *or offices in this state* if the commissioner finds that:

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

➔Section 23. KRS 286.3-172 is amended to read as follows:

- (1) A national banking association may convert into, or merge *or consolidate* with, a state bank under a state charter *in the manner*~~,~~ provided *by*~~that the action taken complies with~~ federal law.
- (2) In the case of each conversion:~~,~~
 - (a) A written plan of conversion shall be submitted~~, in duplicate,~~ to the commissioner;~~,~~
 - (b) *The conversion*~~Such~~ plan shall:
 1. Be in *a* form satisfactory to the commissioner;~~, shall~~
 2. Prescribe the terms and conditions of the conversion and the mode of carrying it into effect;~~,~~ and ~~shall have annexed thereto and forming a part thereof~~
 3. *Include*:
 - a. The proposed articles of incorporation of the state bank *that*~~which~~ is to result from the conversion, *which*~~Such articles of incorporation~~ shall be in the form prescribed by law for the organization of state banks, with ~~such~~ variations, if any, as *are*~~shall be~~ satisfactory to the commissioner; *and*~~With such plan of conversion there shall be submitted, in duplicate, to the commissioner~~
 - b. A certificate of the president, secretary, or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law *for*~~to the consummation of~~ the conversion;~~,~~
 - (c) The commissioner shall approve or disapprove *a conversion*~~such~~ plan~~of conversion~~ within sixty (60) days of the *plan's* submission; ~~thereof to him.~~
 - (d) In considering the approval or disapproval of *a*~~the~~ conversion plan, the commissioner shall take into account:

1. ~~{(a)}~~ *Whether there are any significant supervisory or compliance concerns that exist with respect to the national banking association* ~~{pending administrative or judicial action to which the bank} or any officer or director of the association~~ ~~{bank is a party}~~;
 2. ~~{(b)}~~ The performance of the converting national *banking association* ~~{bank}~~ for the five (5) years preceding the application for conversion as compared to similarly situated state ~~{chartered}~~ banks; and
 3. ~~{(c)}~~ The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state ~~{chartered}~~ bank; ~~{}~~
- (e) ~~{f}~~ The commissioner shall approve *or disapprove a conversion* ~~{such}~~ plan *in writing, which shall be sent to the applicant and filed* ~~{he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the commissioner,}~~ in the office of the commissioner; *and* ~~{}~~
- (f) After *a conversion plan has been approved in writing and filed* ~~{such filing}~~ in the office of the *commissioner* ~~{commission}~~, the conversion shall become effective upon the filing and recording of the articles of incorporation, as provided in KRS 286.3-050, unless a later date is specified in the plan, in which event the conversion shall become effective upon *the* ~~{such}~~ later date. ~~{If the commissioner shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.}~~
- (3) In the case of each merger *or consolidation*: ~~{}~~
- (a) A written plan of merger *or consolidation* shall be submitted ~~{, in duplicate,}~~ to the commissioner; ~~{}~~
 - (b) *The merger or consolidation* ~~{Such}~~ plan shall:
 1. Be in *a* form satisfactory to the commissioner; ~~{and shall}~~
 2. Prescribe the terms and conditions of the merger *or consolidation* and the mode of carrying it into effect; ~~{Such plan may}~~
 3. Provide the name to be borne by the state bank, as receiving corporation, if *the state bank's* ~~{such}~~ name is to be changed; ~~{Such plan may also}~~
 4. *Either*:
 - a. Name the persons who *will* ~~{shall}~~ constitute the first board of directors of the state bank after the merger *or consolidation*; ~~{shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of Subtitle 3 of KRS Chapter 286 relating to the number and qualifications of directors of a state bank; or such plan may}~~
 - b. Provide for:
 - i. *Conducting the affairs of the state bank until* a meeting of the stockholders to elect *the first* ~~{a}~~ board of directors *of the state bank after the merger or consolidation occurs; and*
 - ii. *A stockholder meeting to elect the first board of directors, which shall occur* within sixty (60) days after *the* ~~{such}~~ merger *or consolidation; and* ~~{, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the commissioner the following}~~
 5. *Include*:
 - a. ~~{(a)}~~ By the national banking association, a certificate of the president, secretary, or cashier of *the* ~~{such}~~ association certifying that all steps have been taken which are necessary under federal law *for the* ~~{to the consummation of their}~~ merger *or consolidation; and*
 - b. ~~{(b)}~~ By the state bank, a certificate of the president, secretary, or cashier *of the bank* certifying that *the plan*:
 - i. ~~{such plan of merger}~~ Has been approved by the board of directors of the state bank

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by a majority vote of all the members thereof; ~~that such~~

- ii. ~~plan~~ Has been submitted to the stockholders of the state bank at a meeting ~~thereof~~ held, ~~that~~ upon notice of at least fifteen (15) days ~~that~~ specifying the time and place and object of ~~the~~ ~~such~~ meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424; ~~that~~ and ~~that such~~
- iii. ~~plan of merger~~ Has been approved ~~at such meeting~~ by the vote of *at least two-thirds (2/3) of* the stockholders ~~owning at least two thirds (2/3) in amount of the stock~~ of the state bank; ~~that~~

(c) *The first board of directors of the state bank after the merger or consolidation shall be in accordance with the provisions of this subtitle relating to the number and qualifications of directors of a state bank;*

(d)~~(4)~~ The commissioner shall approve or disapprove ~~a~~ ~~such~~ plan of merger *or consolidation*:

- 1. Within sixty (60) days of ~~the plan's~~ ~~such~~ submission; *and*
- 2. *In writing, which shall be sent to the applicant and filed* ~~thereof to him. If the commissioner shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the commissioner,~~ in the office of the commissioner; *and* ~~that~~

(e) *A merger or consolidation shall become effective* upon ~~the~~ ~~such~~ filing *of an approval of the merger or consolidation plan* in the office of the commissioner, ~~the merger shall become effective,~~ unless a later date is specified in the plan, in which event the merger *or consolidation* shall become effective upon ~~the~~ ~~such~~ later date.

(4) *If the commissioner disapproves a conversion, merger, or consolidation plan:*

- (a) *The commissioner shall state the reasons for disapproval in the filing made under this section; and*
- (b) *The applicant or applicants seeking conversion, merger, or consolidation shall have a right of appeal as permitted by law.*

(5) At the time when ~~a~~ ~~such~~ conversion, ~~or~~ merger, *or consolidation* becomes effective:

- (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties, the resulting bank is a state bank;
- (b) All of the property, rights, and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations, and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if ~~the national banking association's~~ ~~such~~ property, rights, powers, franchises, debts, liabilities, obligations, duties, and relationships had been originally acquired, incurred, or entered into by the resulting state bank, *except* ~~provided, however, that~~ the resulting state bank shall not, through ~~the~~ ~~such~~ conversion, ~~or~~ merger, *or consolidation*, acquire ~~the~~ power to engage in any business or to exercise any right, privilege, or franchise ~~that~~ ~~which~~ is not conferred by the provisions of Subtitle 3 of KRS Chapter 286 upon ~~the~~ ~~such~~ resulting state bank;
- (c) Any reference to the national banking association in any contract, will, or document, whether executed or taking effect before or after the conversion, ~~or~~ merger, *or consolidation*, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will, or document; *and*
- (d) A pending action or other judicial proceeding to which the national banking association is a party ~~that~~ shall not be deemed to have abated or to have discontinued by reason of the conversion, ~~or~~ merger, *or consolidation*, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion, ~~or~~ merger, *or consolidation* had not been made. ~~or~~ The resulting state bank may be substituted as a party to ~~any~~ ~~such~~ action or proceeding *to which the national banking association is a party* ~~that~~ and any judgment, order, or decree may be rendered for or against ~~the resulting state bank~~ ~~that~~ that might have been rendered for or against the national banking association if the conversion, ~~or~~ merger, *or consolidation* had not occurred.

➔Section 24. KRS 286.3-180 is amended to read as follows:

- (1) *Except as provided in KRS 286.3-820, state banks may* ~~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,~~ *the following powers necessary to carry on the business of banking at their principal office or a branch:* ~~by~~
- (a) Discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt; ~~and by~~
 - (b) Purchasing bonds, receiving deposits, and allowing interest on these items;~~;~~
 - (c) Buying and selling exchange, coin, and bullion;~~;~~ and
 - (d) Lending money on personal or real security.
- (2) *Subject to subsection (3) of this section and Section 33 of this Act, a state bank may establish or acquire a branch* within any state, the District of Columbia, or a territory of the United States ~~a branch and may exercise all of the powers conferred in subsection (1) of this section at the branch~~.
- (3) (a) ~~A bank,~~ Except for a bank that the commissioner may designate by the promulgation of administrative regulations *or as provided in subsections (4) and (5) of this section, a state bank* shall apply to the commissioner for permission to establish or acquire a branch.
- (b) ~~Before~~ The commissioner *shall approve an* ~~shall approve or disapprove any~~ application made under this subsection *if,*~~;~~ the commissioner *determines* ~~shall ascertain and determine~~ that:
1. The public convenience and advantage will be served and promoted *by operation of the branch;* and ~~that~~
 2. 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 or acquiring the branch.
- (c) The following conditions shall apply to applications for branches *under this subsection:*
1. ~~(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, *approving the application* ~~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 *and business is not actually begun in good faith* 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 deems to be necessary; and
 2. ~~(b)~~ An application to establish or acquire a branch ~~office~~ shall be approved or disapproved by the commissioner based upon the facts existing *on* ~~at~~ the date ~~of filing of~~ the application *is filed*, except for the financial condition of the bank proposing to establish a branch ~~office~~, which condition shall be subject to review until *a final* ~~an~~ order ruling on the application is made.
- (4)~~(3)~~ Any corporation which on January 1, 1966, was engaged in operating a branch bank may continue to retain and operate the 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 branch bank but only as to those branch banks which may be established in the future in accordance with the terms of this section.
- (5)~~(4)~~ *Except as otherwise expressly provided in this subtitle, the provisions of subsection (3) of this section shall not apply to the conversion, merger, consolidation, acquisition, or combination of any bank or branch that is authorized under another provision of this subtitle* ~~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. The bank which does not survive the merger shall surrender its charter~~.
- (6)~~(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 *that* ~~which~~ state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for *state* banks as to exercise of these powers.
- (7)~~(6)~~ *Except as provided in subsection (9) of this section, when a branch* ~~bank~~ has ~~once~~ been established, any operation of the branch ~~bank~~ shall not be discontinued *or*~~, and the branch bank shall not be~~ closed *unless:*

- (a) *The bank provides at least*~~[until after]~~ ninety (90) days' notice *of the branch's discontinuance or closure* in writing to the commissioner; *and*~~[. In the discretion of]~~
- (b) *If requested by* the commissioner, the~~[branch]~~ bank *provides the commissioner*~~[proposing to discontinue operation may be required to give]~~ notice of the date when *the branch will be discontinued or closed*~~[its operation will cease. The consolidation of two (2) or more branches into a single location in the same vicinity or immediate neighborhood shall not be considered a branch closure subject to the provisions of this subsection].~~
- (8) (a) *Except as provided in subsection (9) of this section, a state bank shall apply to the commissioner for permission to change the location of its principal office or a branch.*
- (b) *The commissioner shall approve a change of location if the commissioner determines that:*
1. *The public convenience and advantage will be served and promoted by the proposed change of location; and*
 2. *There is a reasonable probability of the successful operation of the principal office or branch at the new location.*
- (9) (a) *The commissioner may exempt a bank from compliance with subsection (7) or (8) of this section, or both, through the promulgation of administrative regulations.*
- (b) *The consolidation of two (2) or more branches into a single location, or the relocation of a branch, within the same vicinity or immediate neighborhood shall not be considered a branch closure or change of location subject to the provisions of subsection (7) or (8) of this section if the consolidation or relocation does not substantially affect the nature of the business or customers served.*
- (10) (a) *Except as provided in paragraph (b) of this subsection, a state bank, out-of-state bank, or national bank shall use at all times the same name for all of its branches in Kentucky.*
- (b) *Upon written request, the commissioner shall permit the limited use of a different name at one (1) or more branches when necessary to avoid customer confusion.*

➔Section 25. KRS 286.3-193 is amended to read as follows:

- (1) (a) ~~[The first day of January (New Year's Day), Easter Sunday, the last Monday in May (Memorial Day), the fourth day of July (Independence Day), the first Monday in September (Labor Day), the fourth Thursday in November (Thanksgiving Day), and the twenty-fifth day of December (Christmas) of each year are holidays on which banks shall close. If New Year's Day, Independence Day, or Christmas falls on a Saturday or Sunday, either the preceding Friday or the succeeding Monday shall also be observed as a holiday and the offices of banks closed.]~~
- (2) ~~—~~Except as provided in subsection (1) of this section, ~~]~~A bank, *or any of its branches or other offices:*
1. May, at its option, either close or remain open for business on any day *or during any hours* of the week ~~if provided]~~ the days of the week and the hours *during* which an office of the bank will remain open are conspicuously posted in *each*~~[that]~~ office; *and*~~[.]~~
 - 2.~~[(3)]~~ *Except as provided in paragraph (b) of this subsection, shall not close during any hours or days for which the bank or office has posted that it will be open.*
- (b) A bank~~[,]~~ or ~~[an]~~ office~~[thereof,]~~ may, because of an emergency or any other reason deemed sufficient by the bank, close on any day or days, *in whole or in part*, which it would normally be open for business *if the bank or office gives notice in accordance with paragraph (c) of this subsection.*
- (c) *A bank or office shall give the public*~~[by giving]~~ five (5) business days' notice of ~~a~~~~the]~~ closing *made under paragraph (b) of this subsection*~~[to the public]~~ by posting a statement to that effect in a conspicuous place in *each*~~[the]~~ office of the bank *that*~~[which]~~ will be closed, unless the giving of the notice is impractical because of the existence of an emergency or other condition.
- (2)~~[(4)]~~ (a) Any day on which a bank is closed pursuant to the provisions of this section shall not be a banking day of the bank within the meaning of KRS Chapter 355 or any other law, and no bank shall be required to permit access to its safe deposit vaults on that day.
- (b) When a contract by its terms requires the payment of money or the performance of a condition by or at the bank on a day when the bank is closed, the payment shall be made or condition performed on the next business day succeeding the day when the bank was closed.

- (c) ~~Any~~~~The~~ payment ***made in accordance with paragraph (b) of this subsection*** shall be deemed made and the condition performed with the same force and effect as if made in accordance with the terms of the contract, and no liability or loss of rights shall result from the delay.

➔Section 26. KRS 286.3-280 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section:
- (a) Subject to paragraph (b) of this subsection, ~~a~~~~no~~ bank or trust company shall ***not*** permit any person to become indebted to it or become obligated as guarantor or surety to it in an amount exceeding twenty percent (20%) of the bank's or trust company's capital stock actually paid in and actual amount of surplus, unless the person pledges, for any amount that exceeds the twenty percent (20%) limit, good collateral security or a mortgage upon real or personal property, which at the time is of more than the cash value of the indebtedness or obligation required to be secured under this paragraph above all other encumbrances;
 - (b) In no event shall the indebtedness or obligation of any person exceed thirty percent (30%) of a bank's or trust company's capital stock actually paid in and actual amount of surplus; and
 - (c) When computing the total of a bank's or trust company's capital stock actually paid in and actual amount of surplus, any negative balance of a bank's or trust company's undivided profits account shall be deducted.
- (2) A bank or trust company may, in lieu of complying with subsection (1) of this section, elect to comply with the legal lending limits applicable to national banks, as set forth in 12 U.S.C. sec. 84 and 12 C.F.R. pt. 32, as amended.
- (3) ~~A~~~~No~~ bank or trust company shall ***not*** 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 that exceeds the amount that any other person is authorized by this section to become indebted or obligated to the bank or trust company.
- (4) In computing the indebtedness of any person:
- (a) The liability of any partnership in which the person acts as a general partner, 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; and
 - (b)
 1. Any credit exposure arising from a derivative transaction, repurchase agreement, reverse purchase agreement, securities lending transaction, or securities borrowing transaction shall be included.
 2. For the purposes of this paragraph, the term "derivative transaction" includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one (1) or more commodities, securities, currencies, interest or other rates, indices, or other assets.
- (5) Except as otherwise provided in this section, the same security, both in kind and amount, shall be required from stockholders as from nonstockholders.
- (6) 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.
- (7)
 - (a) ***Except as provided in paragraph (b) of this subsection, a bank shall not make any loan or discount on the security of, or be the purchaser or holder of, the shares of its own capital stock, or the shares of stock of a bank holding company that controls the bank, in an amount that exceeds the amounts permitted by 12 U.S.C. sec. 371c, as that section read on July 15, 1986.***
 - (b) ***A bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business.***
 - (c) ***Any stock purchased or acquired under paragraph (b) of this subsection that exceeds the amount permitted under paragraph (a) of this subsection shall, within six (6) months from the time of purchase or acquisition, be sold or disposed of at public or private sale.***

(d) ***This subsection shall not be construed to affect or modify KRS 386.025.***

➔Section 27. KRS 286.3-330 is amended to read as follows:

- (1) ***A bank may***~~[Banks]~~, subject to statutory or charter limitations,~~[may]~~ pledge ~~a~~~~[such]~~ portion of ~~its~~~~[their]~~ assets or provide surety bonds as may be required by law as collateral security for government deposits made with ~~it~~~~[them, or any of them,]~~ by or under the authority of the United States~~[,]~~ or for any other deposit required by law to be secured.
- (2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond, or in any other form, security for~~[such]~~ deposits shall not be required to the extent ***the deposit is an***~~[said deposits are]~~ insured ***deposit as defined in 12 U.S.C. sec. 1813,***~~[under the provisions of Section 12B of the Federal Reserve Act (38 Stat. 251)]~~ as amended.
- (3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the commissioner, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

➔Section 28. KRS 286.3-350 is amended to read as follows:

- (1) (a) ***Except as provided in subsection (2) of this section,*** the board of directors of any *state* 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 ***appropriate***~~[expedient]~~.
- (b) The net profits ***referenced in paragraph (a) of this subsection*** shall be computed by deducting all expenses, losses, and interest and taxes accrued or due from the bank.
- (2) The ***prior*** approval of the commissioner shall be required if the total of all dividends ***that a state bank or trust company intends to declare***~~[declared by such institution]~~ in any calendar year ***would***~~[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 29. KRS 286.3-690 is amended to read as follows:

- (1) (a) If the commissioner has knowledge or reasonable cause to believe that any bank or trust company, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the bank or trust company has engaged in violations of law, or charter, or administrative regulation promulgated by the department, or in unsafe or unsound business practices, the commissioner may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to ***the*** alleged violations or practices.
- (b) ***The notice of charges issued under paragraph (a) of this subsection shall contain***~~[, and shall fix]~~ the time and place at which an administrative hearing ***conducted in accordance with KRS Chapter 13B*** ~~will~~~~[shall]~~ be held to determine whether an order to cease and desist should issue against the bank, trust company, director, officer, employee, agent, or other person.~~[The hearing shall be conducted in accordance with KRS Chapter 13B].~~
- (2) ***Any***~~[Unless the]~~ party or parties~~[so]~~ served ***with a notice of charges issued pursuant to subsection (1) of this section that fails to***~~[shall]~~ appear at the ***scheduled*** hearing personally or by a duly-authorized representative~~[, they]~~ shall be deemed to have consented to the issuance of the cease and desist order.
- (3) If the parties consent, or if upon the record made at the hearing the commissioner ***finds***~~[shall find]~~ that any violation or unsafe or unsound practice specified in the notice of charges has been established, the commissioner may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person an order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.
- (4) If the commissioner ***determines***~~[shall determine]~~ that the violation or practice, as specified in the notice of charges ***issued*** pursuant to subsection (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or is likely to otherwise seriously prejudice the interests of ***the bank's or trust company's***~~[its]~~ depositors or investors, the commissioner may issue an emergency order pursuant to KRS 13B.125 requiring the bank,~~[or]~~ trust company, director, officer, employee, agent, or other person to cease and desist from any violation or practice.

- (5) (a) A cease and desist order or an emergency cease and desist order shall become effective upon service upon the bank or trust company.
- (b) Unless set aside, limited, or suspended, as provided ~~in~~^{by} subsection (6) of this section, a cease and desist order shall remain effective and enforceable pending completion of an administrative hearing conducted in accordance with KRS Chapter 13B.
- (6) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court for the county in which the bank *or trust company* is located, or the *Franklin* Circuit Court ~~of Franklin County~~, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of the administrative hearing~~, and the court shall have jurisdiction to issue an injunction~~.
- (7) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the commissioner may apply to the Circuit Court for the county in which the bank or trust company is located, or the *Franklin* Circuit Court ~~of Franklin County~~, for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.
- (8) (a) *The commissioner may serve upon any officer, director, or employee of a bank or trust company a written notice of intention to remove him or her from office* if the commissioner ~~determines~~^{shall determine} that:~~any~~
1. *Subject to paragraph (b) of this subsection, the* officer,~~or~~ director, *or employee* ~~of a bank or trust company~~ has:
 - a. Committed any violation of law,~~or~~ an administrative regulation, or~~or~~ a cease and desist order which has become final;~~or has~~
 - b. Engaged in or participated in any unsafe or unsound practice in connection with the bank or trust company;~~or~~ ~~has~~
 - c. Committed or engaged in any act, omission, or practice which constitutes a breach of his or her fiduciary duty as officer or director;~~or~~ and ~~the commissioner determines that~~
 2. *Any of the following are satisfied:*
 - a. The bank or trust company has suffered or will probably suffer substantial financial loss or other damages;~~or that~~
 - b. The interests of *the bank's or trust company's*~~its~~ depositors or investors could be seriously prejudiced by reason of the violation,~~or~~ practice, *or*~~or~~ breach of fiduciary duty; ~~or that~~
 - c. The director,~~or~~ officer, *or employee* has received financial gain by reason of the violation,~~or~~ practice, or breach of fiduciary duty~~, the commissioner may serve upon the director or officer a written notice of intention to remove him or her from office~~.
- (b) The violation, practice, or breach *described in paragraph (a)1. of this subsection* shall be one (1):
1. Involving personal dishonesty on the part of the director,~~or~~ officer, or *employee*; ~~or (1)~~
 2. Which demonstrates a willful or continuing disregard for the safety or soundness of the bank *or trust company*.
- (c) The written notice *issued under paragraph (a) of this subsection* shall serve to suspend the officer,~~or~~ director, *or employee* from office.
- (d) The suspension *referenced in paragraph (c) of this subsection* shall:
1. Become effective upon service of the notice; and~~,~~
 2. Unless stayed by a court in proceedings authorized by subsection (10) of this section,~~shall~~ remain in effect pending the completion of the administrative hearing under subsection (9) of this section.
- (e) The resignation of an officer,~~or~~ director, *or employee* from ~~a~~^{the} bank *or trust company* shall not prohibit the commissioner from pursuing an action for removal of the officer,~~or~~ director, *or employee*.

- (9) A notice of intention to remove an officer,~~or~~ director, **or employee** from office shall contain a:
- (a) Statement of the facts constituting grounds therefor;~~and~~ ~~and~~ ~~shall fix a~~
 - (b) Time and place at which an administrative hearing ~~will~~~~shall~~ be held in accordance with KRS Chapter 13B.
- (10) Within ten (10) days after an officer,~~or~~ director, **or employee** has been suspended from office, the officer,~~or~~ director, **or employee** may apply to the Circuit Court for the county in which the bank or trust company is located for a stay of the suspension pending the completion of the administrative hearing pursuant to the notice served upon the officer,~~or~~ director, **or employee** ~~and the court shall have jurisdiction to grant the stay~~.
- (11) ~~The bank, trust company, or person assessed shall be afforded an opportunity for an administrative hearing upon request made to the commissioner within ten (10) days after issuance of the assessment notice. The hearing shall be conducted in accordance with KRS Chapter 13B.~~
- ~~(12)~~ Any person aggrieved by a final order of the commissioner *issued* under ~~subsections (9) or (11) of~~ this section may obtain a review of the order by filing in the Circuit Court for the county in which the bank or trust company is located a petition of appeal in accordance with KRS Chapter 13B.
- ~~(12)~~~~(13)~~ The commissioner may apply to the Circuit Court for the county in which the bank or trust company is located for an injunction to enforce any final order issued under ~~subsection (9) of~~ this section ~~or any assessment made under subsection (11) of this section~~, and it shall be the duty of the court to issue the injunction.

➔Section 30. KRS 286.3-850 is amended to read as follows:

As used in KRS 286.3-852 to 286.3-884:

- (1) "Bank" means any *state* bank~~, which is now or may hereafter be organized under the laws of this state~~;
- (2) "FDIC" means the Federal Deposit Insurance Corporation and includes any successor to the corporation or other agency or instrumentality of the United States which undertakes to discharge the purposes of the corporation;
- (3) "Receivership court" means the Circuit Court for the county in which the bank is located, *except if no circuit judge in the Circuit Court of the county in which the bank is located is able or available to preside over the receivership at the time an application is made under KRS 286.3-854 due to a conflict of interest or another reason, the circuit clerk of the county in which the bank is located shall at once transfer the matter to the Franklin Circuit Court for immediate action upon the application*; and
- (4) "Insolvent" means that appearing upon examination of any bank its liabilities exceed its assets or it cannot meet its obligations in the usual and ordinary course of business for any reason.

➔Section 31. KRS 286.3-900 is amended to read as follows:

- (1) *As used in* ~~For purposes of~~ this section and KRS 286.3-905:
 - (a) "Bank" means:
 1. Any institution organized under this subtitle, the banking laws of another state, or the National Bank Act, as amended, to do a banking business; *or*
 2. *A bank as defined in 12 U.S.C. sec. 1841, as amended*;
 - (b) "Bank holding company~~,"~~" *has the same meaning as in 12 U.S.C. sec. 1841, as in effect on the effective date of this Act or as amended*;
 - (c) "Company~~,"~~" ~~and "control"~~ *means*:
 1. *Any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five (25) years or not later than twenty-one (21) years and ten (10) months after the death of individuals living on the effective date of the trust, but shall not include:*
 - a. *Any corporation the majority of the shares of which are owned by the United States or by any state; or*
 - b. *A qualified family partnership; or*

2. *A company as defined in* ~~have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. sec. [secs.] 1841, as amended; [et seq.])~~
- (d) "Control":
1. *Has the same meaning as in 12 U.S.C. sec. 1841(a)(2) and (3), as in effect on the effective date of this Act or as amended; and*
 2. May be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;
- (e)~~(e)~~ "Deposit":
1. *Except as provided in subparagraph 2. of this paragraph, has the same meaning as in 12 U.S.C. sec. 1813, as in effect on the effective date of this Act or as amended; and*
 2. *Does not include interbank deposits and deposits in foreign branches and international banking facilities, as shown in the reports made by federally insured depository institutions to their respective supervisory authorities; and*
- (f) "Individual":
1. Means a natural person, partnership, association, business trust, voting trust, or similar organization; ~~and~~ "Individual"
 2. 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) *Except as provided in subsections (3) and (4) of this section*, 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 made by the institutions to their respective supervisory authorities ~~that~~~~which~~ are available at the time of the acquisition.
- (3) (a) The limitations set forth in this section or any other provision of this subtitle 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~~
1. An emergency exists; and
 2. The acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (b) *The determinations referenced in paragraph (a) of this subsection shall be made by the:*
1. *Commissioner, in his or her discretion, if the bank is organized under the laws of this state; or*
 2. *Comptroller of the currency, in his or her discretion, if the bank is a national bank.*
- (4) The provisions of this section shall not *apply to the following, if the commissioner determines that the public convenience and necessity will be served by the merger, consolidation, or sale:*~~be construed to prohibit or restrict~~
- (a) 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; ~~or~~~~nor to prohibit~~
 - (b) 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 286.3-180(4) have been satisfied~~.

➔Section 32. KRS 286.3-915 is amended to read as follows:

- (1) Notwithstanding any other provision of Subtitle 1, 2, or 3 of KRS Chapter 286:
- (a) An individual or bank holding company that controls two (2) or more banks ~~having their principal offices~~ in this ~~state~~ ~~Commonwealth~~ may, from time to time:~~;~~
 1. Combine any or all of the ~~commonly controlled~~ banks ~~in this Commonwealth~~ into and with any one (1) of the **commonly controlled** banks *in this state*, and thereafter, the surviving bank ~~which shall have its principal office in this Commonwealth,~~ shall continue to operate its principal office *in this state* and may operate the other authorized offices of the banks so combined as branches of the surviving bank; ~~or~~~~and~~
 2. ***Transfer all of the branches in a county of one (1) of the commonly controlled banks to any other of the commonly controlled banks in this state, and thereafter, the bank to which the branches are transferred may operate the branches as branches of the bank;***
 - (b)
 1. Any combination authorized by this ~~subsection~~~~section~~ shall not require the approval of the commissioner. ~~of financial institutions, but~~
 2. On or before thirty (30) days prior to ~~the~~ ~~consummation of any~~ combination, the proposed surviving ~~or transferee~~ bank shall notify the commissioner of the combination. ~~and~~
 3. On the effective date of ~~the~~ ~~any such~~ combination, the charter of any combined bank organized under the laws of this ~~state~~ ~~Commonwealth~~ shall be surrendered; ~~and~~.
- ~~(2) Following any combination authorized by this section:~~
- ~~(a) The surviving bank may, subject to the approval of the commissioner as provided in KRS 286.3-180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;~~
 - ~~(b) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and~~
 - ~~(c) With the approval of the commissioner, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank.~~
- ~~(c){(3)}~~ For purposes of this ~~subsection~~~~section~~:
- ~~1.{(a)}~~ The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;
 - ~~2.{(b)}~~ An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;
 - ~~3.{(c)}~~ "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
 - ~~4.{(d)}~~ "Surviving bank" means a bank into which a combined bank has been combined;
 - ~~5.{(e)}~~ "Bank" includes a national bank~~, savings and loan association,~~ and federal savings bank; and
 - ~~6.{(f)}~~ "Individual~~,~~" **and** "bank holding company~~,~~" ~~and "deposit" shall~~ have the same meanings as ~~attributed to them~~ in KRS 286.3-900~~(1)~~.
- (2) (a) ***The commissioner shall approve the following, if he or she determines that the public convenience and necessity will be served by the merger, consolidation, or sale:***
1. ***The merger or consolidation of state banks having their principal offices in the same county and the operation by the merged or consolidated corporation of the banks; or***
 2. ***The sale of any state bank to, and the purchase thereof by, any other state bank with its principal office in the same county and the operation of the bank by the purchasing bank as a branch.***
- (b) ***The bank that does not survive the merger or consolidation shall surrender its charter.***

➔Section 33. KRS 286.3-920 is amended to read as follows:

- (1) As used in this section~~[, unless the context requires otherwise]:~~
- (a) **"Bank" includes:**
 1. **An out-of-state bank; and**
 2. **A national bank;**
 - (b) "Interstate merger transaction" means:
 1. The merger or consolidation of banks with different home states, **including**~~and~~ the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; ~~or~~~~and~~
 2. **The acquisition of a bank's branch or branches by a bank with a different home state without acquisition of the bank; and**
 - ~~(c)(b)~~ "Resulting bank" means ~~the~~~~a~~ bank that has resulted from **a merger or consolidation**~~[an interstate merger transaction under this section].~~
- (2) (a) A Kentucky state bank may:
1. 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
 2. If the other state permits, **acquire**~~[by acquisition of]~~ a **bank's** branch or branches in ~~a~~~~the other~~ state **other than Kentucky in accordance with an interstate merger transaction in which the Kentucky state bank does not acquire the bank.**
- (b) 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:
1. File an application on a form prescribed by the commissioner;~~[and]~~
 2. Pay **any**~~the~~ fee prescribed by KRS 286.3-480; ~~and~~~~[The applicant shall also]~~
 3. Comply with the applicable provisions of KRS 286.3-180(3) **for the establishment or acquisition of branches by Kentucky state banks.**~~[(2) and]~~
- (c) The commissioner shall base his or her approval or disapproval **of the interstate merger transaction on the requirements of this subtitle and the factors**~~[in the same manner as]~~ prescribed in KRS 286.3-180(3)(b)~~[(2)].~~
- (3) (a) An **out-of-state**~~[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**~~[out of state state]~~ bank is the resulting bank~~[in accordance with the requirements of Kentucky laws and administrative regulations].~~
- (b) If the laws of the home state of the **out-of-state**~~[out of state]~~ bank place more restrictive terms or requirements on Kentucky state banks seeking to~~acquire and~~ merge **or consolidate** with a bank in that state, the interstate merger **transaction** of the **out-of-state**~~[out of state]~~ bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks **seeking to merge or consolidate with a bank in the home state of the out-of-state bank**~~[that state].~~
- (c) 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:
1. File an application on a form prescribed by the commissioner;~~[,]~~
 2. Pay **any**~~the~~ fee prescribed by KRS 286.3-480;~~[and]~~
 3. Agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky; ~~and~~~~[The applicant shall also]~~
 4. Comply with the applicable provisions of KRS 286.3-180(3) **for the establishment or acquisition of branches by Kentucky state banks.**~~[(2) and]~~

- (d) The commissioner shall base his or her approval or disapproval *of the interstate merger transaction on the requirements of this subtitle and the factors* ~~[in the same manner as]~~ prescribed in KRS 286.3-180(3)(b) ~~[(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 *that* ~~[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 *located in Kentucky* may conduct:
- (a) Any activities *in this state, other than fiduciary activities*, that are authorized under the laws of this state for *Kentucky* state banks; ~~[-]~~
- (b) *Fiduciary activities in this state that are authorized under the laws of this state for Kentucky state banks if a branch of a Kentucky state bank located in the out-of-state bank's home state is permitted to engage in substantially similar activities under the laws of the out-of-state bank's home state; and*
- (c) ~~[Additionally, the branch of an out-of-state state bank is authorized to conduct]~~ Any activities *in this state* relating to the administration of trusts that are authorized under, *and conducted in conformity with*, the laws of *the out-of-state bank's* ~~[its]~~ home state *for the bank* ~~[-, 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.]~~
- ~~(6)~~ ~~[(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.
- ➔Section 34. KRS 286.3-990 is amended to read as follows:
- (1) (a) *The commissioner* ~~[Any person who violates KRS 286.3-030(2)]~~ may *levy a civil penalty against any person that violates Section 12 of this Act.*
- (b) *The civil penalty levied under paragraph (a) of this subsection shall* ~~[be fined]~~ not *be* less than ~~[five hundred dollars (\$500) nor more than]~~ one thousand dollars (\$1,000) *nor more than five thousand dollars (\$5,000) for each violation, plus the state's costs and expenses for examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs* ~~[for each day he or she is engaged in the private banking business].~~
- (2) ~~[Any institution that fails to make the report required by KRS 286.3-420 to the commissioner within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 286.3-420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars (\$200).]~~
- ~~(3) If any person violates KRS 286.3-440(3) his or her 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 KRS 286.3-440(3) shall immediately report such fact to the commissioner, who may remove the person so offending.~~
- ~~(4)]~~Any receiver of an insolvent institution who fails to comply with the provisions of this subtitle shall be subject to the same penalties provided for solvent institutions and officers so offending.
- ~~(3)~~ ~~[(5)]~~ (a) 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.

- (b) If the loss or damage is not made good within a reasonable time, the commissioner, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.
- ~~(4)(6)~~ Any deputy commissioner 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 commissioner, or who violates any of the provisions of this subtitle, shall:
- (a) Forfeit his or her office; and ~~shall~~
- (b) **Pay a civil penalty of ~~Be fined~~** not less than one hundred (\$100) nor more than two thousand dollars (\$2,000) for each **violation**~~offense~~.
- ~~(5)(7)~~ Any commissioner 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 subtitle, or who violates any of the provisions of this subtitle, shall:
- (a) Forfeit his or her office; and ~~shall~~
- (b) **Pay a civil penalty of ~~Be fined~~** not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each **violation**~~offense~~.
- ~~(6)(8)~~ (a) **The commissioner may levy a civil penalty against** any bank or trust company that knowingly fails to:
1. Make a report required by law or by the commissioner within the time designated for ~~the~~ making **the report**; ~~thereof, or fails to~~
 2. Include in ~~a~~~~such~~ report any matter required by law or by the commissioner; ~~or fails to~~
 3. Publish a report within thirty (30) days after it should have been published; ~~or fails to~~
 4. Pay, when due, the fees for:
 - a. Filing reports; ~~or for~~
 - b. An examination of the bank **or trust company**; **or**
 - c. **The annual assessment required under KRS 286.3-480** ~~, 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).~~
- (b) **The civil penalty levied under paragraph (a) of this subsection shall not be more than one hundred dollars (\$100) for each day of delinquency, and in no event shall the aggregate penalty for any violation exceed one thousand dollars (\$1,000).**
- ~~(7)(9)~~ (a) **The commissioner may levy a civil penalty against:**
1. Each ~~person,~~ bank ~~,~~ or trust company that willfully:
 - a. Makes or transmits a false report; or
 - b. Refuses to submit its books, papers, and assets for examination; ~~or~~
 2. Any officer of a bank **or trust company** who refuses to be examined under oath concerning the affairs of the bank **or trust company** ~~, shall be severally fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).~~
- (b) **The civil penalty levied under paragraph (a) of this subsection shall not be less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation.**
- ~~(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.~~
- (8) ~~(a)(11)~~ **The commissioner may levy a civil penalty against any person that violates** ~~Any person violating any of the provisions of~~ KRS 286.3-225. ~~shall be guilty of a misdemeanor and fined~~
- (b) **The civil penalty levied under paragraph (a) of this subsection shall not be less than fifty dollars (\$50) nor more than two thousand dollars (\$2,000) for each violation.**

- ~~(12) Any person who willfully makes charges in excess of those permitted by KRS 286.3 720 to 286.3 770 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 286.3 720 to 286.3 770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 286.3 740 and 286.3 750, and the debtor, or the debtor's 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 286.3 760.~~
- ~~(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 286.3 710 to 286.3 770 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 286.3 710 to 286.3 770.]~~
- ~~(9)(15)~~ (a) *The commissioner may levy a civil penalty against* any bank or trust company *that*~~[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 286.3-690 which has become final.
- (b) *The civil penalty levied under paragraph (a) of this subsection shall not be*~~[forfeit and pay a fine of not more than one thousand dollars (\$1,000)]~~ *per day* for each day *the*~~[such]~~ violation continues, *and in no event shall the aggregate penalty for any violation exceed ten thousand dollars (\$10,000)*. ~~[The fine shall be assessed by the commissioner by written notice.]~~
- (c) As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation.
- (d) In determining the amount of the *civil penalty*,~~[fine]~~ the commissioner shall consider:
1. The financial resources and good faith of the bank, *trust company*, or person charged;~~[;]~~
 2. The gravity of the violation;~~[;]~~
 3. The history of previous violations; and
 4. Such other factors as justice requires.
- ~~(16) Any bank which violates the provisions of KRS 286.3 065 may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The fines may be assessed by the commissioner by written notice.]~~
- ~~(10)(17)~~ *The commissioner may levy a civil penalty against* any bank *that*~~[which]~~ violates *subsection (1)(i) or (j) of Section 19 of this Act of:* ~~[any provisions of KRS 286.3 100(10) may be fined]~~
- (a) *For the first violation*, not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000);~~[for the first violation,]~~ and
- (b) *For the second or any subsequent violation*,~~[may be fined]~~ not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000)~~[for any subsequent violations].~~
- ~~(11)(18)~~ *The commissioner may levy a civil penalty against* any officer or director who violates~~[the provisions of:]~~
- (a) KRS 286.3-280(1) or (2). *The civil penalty shall*~~[may be fined]~~ not *be* less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation;~~[;]~~ and
- (b) ~~[any officer or director who violates the provisions of]~~KRS 286.3-280(3). *The civil penalty shall*~~[may be fined]~~ not *be* less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each violation.~~[The fine may be assessed by the commissioner by written notice.]~~
- ~~(12) Except as provided in subsection (13) of this section:~~
- (a) *The commissioner shall provide written notice of any civil penalty assessed under this subtitle; and*

(b) *Whenever any civil penalty imposed under this subtitle is not paid, the commissioner may institute an action in Franklin Circuit Court or the Circuit Court of the county in which the violation was committed to recover the civil penalty.*

(13) *In the case of a violation of subsection (5) of this section, the secretary of the Public Protection Cabinet may designate the Attorney General or any other person authorized to represent the cabinet to provide written notice or institute an action under subsection (12) of this section.*

➔Section 35. KRS 286.3-102 is amended to read as follows:

- (1) As used in this section, a CAMELS rating means a system of rating used by examiners of financial institutions to rate the institutions in six (6) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, liquidity, and sensitivity to market risk.
- (2) In addition to all other banking activities permitted by this subtitle, a state bank receiving a CAMELS 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;
 - (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 department upon request.
- (4) This section shall not apply to exempt any laws which regulate Kentucky state banks pertaining to deferred deposit transactions in Subtitle 9 of this chapter, ~~title pledge lending in Subtitle 10 of this chapter,~~ visitatorial or examination powers, and interest rates.

➔Section 36. KRS 286.4-410 is amended to read as follows:

- (1) As used in this subtitle, unless the context requires otherwise:
 - (a) "Applicant" means a person filing an application under this subtitle;
 - (b) "Consumer loan company" means a person licensed under this subtitle to engage in the business of making loans to a consumer for personal, family, or household use in the amount or value of fifteen thousand dollars (\$15,000) or less;
 - (c) "Control" means the power to direct the management or policies of a licensee or applicant, whether through ownership of securities, by contract, or otherwise;
 - (d) "Executive officer" means a natural person holding the title or responsibility of president, vice president, chief executive officer, chief financial officer, chief operational officer, or chief compliance officer;
 - (e) "Licensee" means a person licensed under this subtitle;
 - (f) "Managing principal" means a natural person who meets the requirements of KRS 286.4-450 and actively participates in and is primarily responsible for the operations of a licensee;
 - (g) "Material fact" means a fact that a reasonable person knows, or should know, that could reasonably be expected to influence any decision or action taken by the commissioner under this subtitle;
 - (h) "Nationwide consumer reporting agency" means a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis as defined by Section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a(p); and
 - (i) "Person in control of a licensee or applicant" means, with respect to an applicant or licensee, any of the following:
 1. A director, general partner, or executive officer;

2. In the case of a limited liability company, a managing member or manager;
 3. Any person who directly or indirectly has the right to vote twenty-five percent (25%) or more of a class of voting securities;
 4. Any person who has the power to sell or direct the sale of twenty-five percent (25%) or more of a class of voting securities;
 5. In the case of a partnership or limited liability company, any person that has the right to receive twenty-five percent (25%) or more of the capital upon dissolution; or
 6. Any person that exercises control.
- (2) This subtitle shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan associations, agricultural cooperative associations, credit unions, ~~industrial loan companies,~~ or licensed pawnbrokers. This subtitle does not apply to the purchase or acquisition, directly or indirectly, of notes, chattel mortgages, installment or conditional sales contracts, embodying liens or evidencing title retention arising from the bona fide sale of goods or services by a seller of the goods or services.

➔Section 37. KRS 286.9-030 is amended to read as follows:

The provisions of this subtitle shall not apply to:

- (1) Any bank, trust company, savings and loan association, savings bank, credit union, *or* consumer loan company ~~that, or industrial loan corporation which~~ is chartered, licensed, or organized under the laws of this Commonwealth or under federal law and authorized to do business in this Commonwealth;
- (2) Any person who cashes checks without receiving, directly or indirectly, any consideration or fee therefor;
- (3) Any person principally engaged in the retail sale of goods or services who, either as an incident to or independently of a retail sale, may from time to time cash checks for a fee or other consideration;
- (4) The United States and any department, agency, or instrumentality thereof; and
- (5) A state or any agency, department, or political subdivision of a state.

➔Section 38. KRS 286.12-020 is amended to read as follows:

- (1) As used in this section, "federal student education loan" means any:
 - (a) Student education loan issued pursuant to the William D. Ford Federal Direct Loan Program established under 20 U.S.C. sec. 1087a et seq., as amended;
 - (b) Student education loan issued pursuant to the Federal Family Education Loan Program, which was purchased by the United States pursuant to the federal Ensuring Continued Access to Student Loans Act of 2008, Pub. L. No. 110-227, and is presently owned by the United States; or
 - (c) Other student education loan issued pursuant to a federal program that is identified by order of the commissioner as a federal student education loan.
- (2) Except as provided in subsections (3) and (4) of this section, no person shall engage in the business of servicing student education loans in this state without having first obtained a license as a student education loan servicer in accordance with this subtitle.
- (3) The following shall be exempt from the provisions of this subtitle:
 - (a) A bank ~~or,~~ trust company ~~, or industrial loan company~~ doing business under the authority of, or in accordance with, a license, certificate, or charter, issued by the United States, or any state, district, territory, or commonwealth of the United States, that is authorized to transact business in this state;
 - (b) A wholly owned subsidiary of any entity exempt under paragraph (a) of this subsection;
 - (c) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state;
 - (d) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state that is authorized to transact business in this state;
 - (e) A public postsecondary education institution or private nonprofit postsecondary education institution servicing a student education loan extended to a borrower;

- (f) The United States, or any state, district, territory, commonwealth, or possession of the United States;
 - (g) Any city, county, or other political subdivision of any entity exempt under paragraph (f) of this subsection; and
 - (h) Any agency, division, or corporate instrumentality of any entity exempt under paragraph (f) or (g) of this subsection.
- (4) A person servicing federal student education loans in this state shall:
- (a) As of July 14, 2022, automatically be deemed, by operation of law, as having been licensed by the commissioner to service federal student education loans in this state;
 - (b) Provide notice to the commissioner that the person is servicing federal student education loans in this state;
 - (c) Comply with this subtitle, with the exception of KRS 286.12-030; and
 - (d) Not be authorized to engage in the business of servicing non-federal student education loans in this state unless the person is:
 1. Exempt from this subtitle under subsection (3) of this section; or
 2. Licensed as a student education loan servicer in accordance with this subtitle.

➔Section 39. KRS 286.8-020 is amended to read as follows:

- (1) The following mortgage loan companies and mortgage loan brokers shall be subject to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:
- (a) Any person duly licensed, chartered, and otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, savings and loan association holding company, service corporation subsidiary of a savings and loan association, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or any wholly owned subsidiary of any such person if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency;
 - (b) Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (d) Any person other than a natural person, including any affiliate of that person, that makes in the aggregate no more than four (4) mortgage loans within a calendar year with its own funds and secured by residential real property owned by the person making the mortgage loan, provided that the mortgage loan is made without the intent to resell the mortgage loan, and provided that the person does not hold itself out to the public as being primarily in the mortgage loan business;
 - (e) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
 - (f) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
 - (g) Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;

- (h) A consumer loan~~[or finance]~~ company~~[or an industrial loan company]~~ licensed under Subtitle 4~~[or 7]~~ of this chapter whose primary business is originating consumer~~[or industrial]~~ loans as provided under Subtitle 4~~[or 7]~~ of this chapter or any wholly owned subsidiary of such a consumer loan~~[or finance]~~ company~~[or an industrial loan company]~~, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and
 - (i) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.
- (2) The following shall be exempt from the licensing provisions of this subtitle and the examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on grounds satisfactory to the commissioner that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle:
- (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; and
 - (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth.
- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)(i) or (2)(a) or (b) of this section shall file with the commissioner a written application for a claim of exemption. The commissioner shall approve an application for an exemption that is timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the commissioner on or before December 31 of the same calendar year. A written application for a partial-year exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted.
- (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties each year in order to maintain its exemption.
- (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the *United States* Department of Housing and Urban Development shall notify the commissioner, in writing, within ten (10) days after it ceases to be *approved or* regulated~~[by the United States Department of Housing and Urban Development]~~.
- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), (g), or (h) of this section shall not be required to file with the commissioner a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:
- DISCLOSURE
- (Name and address of lender) is not licensed or regulated by the Kentucky Department of Financial Institutions.
- (Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.
- (The phone number and address of the Kentucky Department of Financial Institutions.)
- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans from December 1 of the previous calendar year to November 30 of the current calendar year to the commissioner by December 31 of each year on a form prescribed by the commissioner.

- (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:
- (a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the commissioner; or
 - (b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the commissioner.
- (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who makes a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:
- (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the commissioner that an examination is necessary;
 - (b) Disclosure requirements of subsection (7) of this section;
 - (c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(7), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
 - (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
 - (e) Registration and regulatory requirements of KRS 286.8-255.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.
- (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the commissioner or an examiner of the commissioner the records in its possession or control that are subject to the provisions of this subtitle.
- (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the commissioner or an examiner of the commissioner from interviewing any person regarding any potential violations of this subtitle.
- (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of KRS 286.8-255 shall complete and timely submit to the Nationwide Multistate Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Multistate Licensing System and Registry may require, along with any other information which may be required by the commissioner.

➔Section 40. KRS 367.380 is amended to read as follows:

As used in KRS 367.380 to 367.389~~[-, unless the context requires otherwise]:~~

- (1) "Advance fee" means any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker;~~[-]~~
- (2) "Affiliate" means any person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person;~~[-]~~
- (3) "Borrower" means a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit;
- (4) (a) "Loan broker" means any person, not exempt under paragraph (b), who:
 1. For or in expectation of consideration arranges, attempts to arrange, or offers to fund a loan of money, a credit card, or a line of credit;
 2. For or in expectation of consideration assists, or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;
 3. Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or
 4. Holds himself out as a loan broker.

- (b) The following persons shall not be considered loan brokers under paragraph (a):
1. A bank; savings and loan association; trust company; credit union; consumer loan company; investment company; ~~industrial loan company;~~ securities broker-dealer, agent, or investment adviser; real estate broker or sales associate; attorney; Federal Housing Administration or United States Department of Veterans Affairs approved lender; credit card company; mortgage loan company; mortgage loan broker; public utility; insurance company; or insurance agent, solicitor, consultant, motor vehicle manufacturer, or motor vehicle dealer, if it is licensed by and subject to regulation or supervision of an agency, commission, or department of the United States or the Commonwealth, and if it is acting within the scope of its license, permit, or registration or with express written authority from the regulatory or supervising agency. Subsidiaries of licensed or chartered consumer loan companies, banks, or savings and loan associations are not loan brokers;~~;~~
 2. A person extending or arranging credit, or offering to extend or arrange credit, to a partnership or corporation exclusively for commercial or business purposes;
 3. A depository financial institution chartered or licensed by an agency, commission, or department of another state, if the funds on deposit with the institution are insured by the Federal Deposit Insurance Corporation;
 4. An affiliate of a person listed in subparagraph 2; or
 5. A bona fide seller or lessor of goods, services, or interests in real estate in a transaction in which the seller or lessor extends, arranges, or offers to extend or arrange credit that is to be used exclusively for financing the purchase or lease or for services performed by an independent third party directly related to the purchase or lease. A transaction shall not be exempt under this subparagraph if the purchaser or lessee receives, or is to receive, a cash advance or consolidation loan in addition to the financing; **and**
- (5) "Principal" means any officer, director, partner, joint venturer, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker.

➔Section 41. 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;~~;~~
†
- (2) Any national bank located in Kentucky having fiduciary powers;~~;~~~~and~~
- (3) Any state bank or trust company incorporated under the laws of **this**~~the~~ state~~of Kentucky~~ and authorized by law to act as fiduciary;
- ~~(4)(2)~~ To the extent permitted pursuant to KRS 286.3-146 and 286.3-920~~(5)(6)~~, any bank or trust company organized under the laws of a state other than Kentucky; and
- ~~(5)(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 42. KRS 286.8-034 is amended to read as follows:

- (1) (a) ***In addition to any fee required under subsection (8) of this section,*** an applicant for a license under this subtitle shall provide the commissioner with a check payable to the Kentucky State Treasurer ***in the following amount:***
 1. ***For a mortgage loan company license applicant, two thousand five hundred dollars (\$2,500);***
or
 2. ***For a mortgage loan broker license applicant, one thousand dollars (\$1,000)***~~for five thousand dollars (\$5,000)~~.
- (b) The fee required under paragraph (a) of this subsection shall cover the application fee and the licensing fee for all licensed locations, including any changes of address.
- (2) (a) A license issued between January 1 and September 30 of the same calendar year shall expire on December 31 of the same calendar year.

- (b) A license issued between October 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (3) A license may be renewed by submitting the following:
- (a) ~~1. An annual assessment fee *as set forth in subsection (4) of this section*.~~
~~2. Subject to subparagraph 3. of this paragraph, the annual assessment fee required under subparagraph 1. of this paragraph shall:~~
- ~~a. Be based on the volume of loans originated and the volume of loans serviced for residential real property located in Kentucky during the twelve (12) month period ending on September 30;~~
- ~~b. Be determined by applying a factor of one hundred twenty five ten thousandths percent (0.0125%) to the volume of loans originated and the volume of loans serviced in Kentucky; and~~
- ~~c. Cover:~~
- ~~i. The renewal fee for the principal office and any branches; and~~
- ~~ii. Any examination related costs incurred by the department.~~
- ~~3. The annual assessment fee shall not be:~~
- ~~a. Less than one thousand five hundred dollars (\$1,500); or~~
- ~~b. More than fifteen thousand dollars (\$15,000);~~
- (b) An annual report of condition to the Nationwide Multistate Licensing System and Registry, which shall be in such form and contain such information as the Nationwide Multistate Licensing System and Registry may require; and
- (c) Any other information required by the commissioner.
- (4) (a) **1. Subject to subparagraph 2. of this paragraph, the annual assessment fee for a mortgage loan company shall be:**
- a. Based on the volume of loans funded and the volume of loans serviced for residential real property located in Kentucky during the twelve (12) month period ending on September 30; and**
- b. Determined by applying a factor of one hundredths percent (0.01%) to the volume of loans funded and the volume of loans serviced in Kentucky.**
- 2. The annual assessment fee for a mortgage loan company shall not be:**
- a. Less than one thousand dollars (\$1,000); or**
- b. More than fifteen thousand dollars (\$15,000).**
- (b) **The annual assessment fee for a mortgage loan broker shall be one thousand dollars (\$1,000).**
- (c) **The annual assessment fee paid by a mortgage loan company or mortgage loan broker under this subsection shall cover:**
- 1. The renewal fee for the principal office and any branches; and**
- 2. Any examination-related costs incurred by the department.**
- (5) (a) The commissioner shall, by administrative regulation or order, adjust the fees in subsections (1) and ~~(4)(3)(a)~~ of this section every two (2) years.
- (b) An adjustment under paragraph (a) of this subsection shall be calculated based on the percent change in the nonseasonally adjusted annual average Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average, All Items, as published by the United States Bureau of Labor Statistics.
- ~~(6)(5)~~ The commissioner shall not approve the renewal of a mortgage loan broker's license if the commissioner has not received the information on physical location as required in KRS 286.8-032(8).

- (7)(6) (a) The renewal application, fees, and any required information shall be received by the commissioner on or before November 30 prior to the December 31 expiration date.
- (b) The commissioner may reinstate a license within thirty-one (31) days of the expiration of the license if the licensee pays:
1. The *annual* assessment fee; and
 2. A reinstatement fee of five hundred dollars (\$500).
- (c) A license shall not be reinstated when the renewal application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.
- (8) ***Except as provided in subsection (7)(b) of this section, if an applicant for a license under this subtitle has surrendered a license or allowed a license to expire within ninety (90) days before submitting the application, the applicant shall, in addition to any other fee required under this section, pay any annual assessment fees that remained unpaid at the time the license was surrendered or expired.***

➔Section 43. The following KRS sections are repealed:

- 286.1-012 Appointment of commissioner -- Qualifications.
- 286.1-025 Deputy commissioner -- Appointment -- Service as commissioner.
- 286.2-030 Prohibition against improperly influencing a mortgage loan real estate appraisal.
- 286.2-100 Definitions for KRS 286.2-100 to 286.2-680.
- 286.2-680 Foreign financial institutions, when not required to qualify as doing business -- Nexus requirement.
- 286.3-030 Limitation on right to engage in business -- Authorization for Kentucky chartered banks and subsidiaries to sell insurance -- Names to be used by branch offices.
- 286.3-065 Officers and directors to act in good faith and with necessary and reasonable care and diligence.
- 286.3-080 Minimum capital and surplus required to begin business.
- 286.3-090 Reduction of capital stock of bank or trust company to be approved by commissioner -- \$2,500,000 in capital stock to be maintained.
- 286.3-150 Consolidation of trust companies -- Method and effect.
- 286.3-160 State bank may reorganize as national bank.
- 286.3-170 National bank may reorganize as state bank.
- 286.3-174 Provisions of KRS 286.3-172 and 286.3-173 to constitute alternative method -- Legislative purpose declared.
- 286.3-183 Transfer of branches between commonly controlled banks.
- 286.3-185 Change of location -- Approval by commissioner.
- 286.3-200 Certain banks may continue to act as fiduciaries.
- 286.3-215 Authority to charge interest in advance -- Installment loans with interest in advance -- Exceptions -- Restrictions on installment loans.
- 286.3-340 Preferred stock.
- 286.3-385 Educational loans to minors -- Validity.
- 286.3-710 Definitions for KRS 286.3-720 to 286.3-770.
- 286.3-720 Form and provisions of credit plan -- Disclosures.
- 286.3-730 Billing cycle -- Payment of balance -- Payment of credit card charges.
- 286.3-740 Finance charges -- Rate.
- 286.3-750 Additional fees, charges and costs.
- 286.3-760 Limitation on amount charged.

- 286.3-765 "Credit card guaranty" defined -- Requirement to insure validity.
- 286.3-770 Credit plans not invalidated.
- 286.5-005 Title of law.
- 286.5-011 Definitions.
- 286.5-021 Who may incorporate -- Procedure.
- 286.5-022 Former corporations deemed incorporated under this law -- Effect on rights -- Severability.
- 286.5-024 Proof by existing association of federal insurance or private insurance meeting minimum standard -- Effect of noncompliance.
- 286.5-025 Insurance requirement for certificate of incorporation.
- 286.5-031 Commissioner to investigate -- Objections -- Approval -- Certificate issued -- Filing.
- 286.5-041 Name of association -- Use of terms in name prohibited -- Injunction.
- 286.5-051 Office -- Located where -- Change of name or location.
- 286.5-061 Branch offices -- Limits on establishment.
- 286.5-071 Corporate existence begins -- When.
- 286.5-081 General powers of association.
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➔Section 44. (1) The Governor shall make the initial appointment under subsection (2)(e) of Section 2 of this Act within ninety days of the effective date of this Act.

(2) Notwithstanding subsection (1) of Section 2 of this Act, appointments under subsection (2) of Section 2 of this Act shall be staggered so that, of the 12 total voting board member appointments, not more than 4 appointments expire at any one time.

Signed by Governor April 9, 2024.