

1 AN ACT relating to special purpose depository institutions.

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

3 ➔SECTION 1. SUBTITLE 12 OF KRS CHAPTER 286 IS ESTABLISHED,
4 AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *(1) The General Assembly finds the following:*

6 *(a) The rapid innovation of blockchain technology, including the growing use*
7 *of virtual currency and other digital assets, has resulted in many blockchain*
8 *innovators being unable to access secure and reliable banking services,*
9 *hampering development of blockchain services and products in the*
10 *marketplace;*

11 *(b) Federally insured financial institutions are not generally permitted to*
12 *manage accounts in virtual currency or hold other digital assets;*

13 *(c) Blockchain innovators have greater compliance challenges with federal*
14 *customer identification, anti-money laundering, and beneficial ownership*
15 *requirements because of the complex nature of these obligations and the*
16 *unfamiliarity of regulators with blockchain innovators' businesses;*

17 *(d) The intricate obligations of blockchain innovators has resulted in many*
18 *financial institutions in Kentucky and across the United States refusing to*
19 *provide banking services to blockchain innovators and also refusing to*
20 *accept deposits in United States currency obtained from the sale of virtual*
21 *currency or other digital assets;*

22 *(e) Compliance with applicable federal and state laws is critical to ensuring the*
23 *future growth and reputation of the blockchain and technology industries*
24 *as a whole;*

25 *(f) Most financial institutions today do not have the requisite expertise or*
26 *familiarity with the challenges facing blockchain innovators, which is*
27 *required to provide secure and reliable banking services to these innovators;*

1 and
 2 (g) A new type of Kentucky financial institution that has expertise with
 3 customer identification, anti-money laundering, and beneficial ownership
 4 requirements could seamlessly integrate these requirements into its
 5 operating model.

6 (2) The purpose of this subtitle is to:

7 (a) Provide a necessary and valuable service to blockchain innovators;

8 (b) Emphasize Kentucky's partnership with the technology and financial
 9 industries; and

10 (c) Safely grow Kentucky's financial sector.

11 ➔SECTION 2. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 12 IS CREATED TO READ AS FOLLOWS:

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

14 (1) The following have the same meaning as in KRS 286.3-010:

15 (a) "Articles of incorporation";

16 (b) "Board of directors";

17 (c) "Corporation";

18 (d) "Director";

19 (e) "Shareholder"; and

20 (f) "Stock"; and

21 (2) "Special purpose depository institution" means a corporation chartered under
 22 this subtitle to engage in the business authorized under this subtitle.

23 ➔SECTION 3. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 24 IS CREATED TO READ AS FOLLOWS:

25 No person shall carry on, in this state, a business authorized under this subtitle, except
 26 in compliance with this chapter.

27 ➔SECTION 4. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

2 (1) As used in this section, "usual or incidental to the business of banking" shall
3 include the following:

4 (a) Acting as a fiduciary and engaging in trust business, which shall include
5 custodial, safekeeping, and asset services activities;

6 (b) Investment adviser, investment company, and broker-dealer activities,

7 (c) Commodities intermediary activities; and

8 (d) Other activities determined by the commissioner to be usual or incidental to
9 the business of banking.

10 (2) (a) Except as otherwise provided by paragraph (b) of this subsection, five (5) or
11 more natural persons may form a special purpose depository institution.

12 (b) Subject to applicable federal and state law, a bank holding company may
13 apply to hold a special purpose depository institution.

14 (3) A special purpose depository institution shall be organized as a corporation under
15 Kentucky law to exercise the powers set forth in subsection (4) of this section.

16 (4) Each special purpose depository institution may:

17 (a) Receive notes and buy and sell gold and silver coins and bullion as
18 permitted by federal law;

19 (b) Carry on a nonlending banking business for depositors, consistent with
20 subsection (5) of this section;

21 (c) Provide payment services upon the request of a depositor;

22 (d) Make an application to become a member bank of the federal reserve
23 system;

24 (e) Purchase debt obligations specified in subsection (1)(b)2. of Section 9 of
25 this Act;

26 (f) Engage in any other activity that is usual or incidental to the business of
27 banking, subject to the prior written approval of the commissioner;

1 (g) Receive deposits relating to activities authorized by the commissioner under
 2 paragraph (f) of this subsection; and

3 (h) Exercise powers and rights otherwise authorized for corporations under
 4 Kentucky law that are not inconsistent with this subtitle.

5 (5) (a) Except as otherwise provided in subsection (4)(e) of this section and
 6 paragraph (b) of this subsection, a special purpose depository institution
 7 shall not make loans, including the provision of temporary credit relating to
 8 overdrafts.

9 (b) An institution that has been approved by the commissioner to act as a
 10 fiduciary and engage in trust business may engage in any activity
 11 permissible for trust companies under Subtitle 3 of this chapter.

12 (6) The commissioner shall not approve a request made under subsection (4)(f) of
 13 this section if the requested activity would:

14 (a) Adversely impact the solvency, or the safety and soundness, of the special
 15 purpose depository institution; or

16 (b) Conflict with any provision of this subtitle.

17 (7) A special purpose depository institution shall maintain its principal operating
 18 headquarters, and the primary office of its chief executive officers, in Kentucky.

19 (8) A special purpose depository institution may:

20 (a) Conduct business with depositors outside this state; and

21 (b) Refer to itself as a "bank".

22 ➔SECTION 5. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 23 IS CREATED TO READ AS FOLLOWS:

24 (1) No person shall transact any business as a special purpose depository institution,
 25 except business which is incidental or preliminarily necessary to its organization,
 26 without first:

27 (a) Obtaining a charter from the commissioner under this subtitle;

1 (b) Satisfying the requirements for incorporation under Kentucky law;

2 (c) Filing, with the commissioner, the adopted bylaws, as approved by the
3 commissioner during the application process; and

4 (d) Complying with Sections 6, 8, and 9 of this Act.

5 (2) The commissioner shall not accept an application for a special purpose
6 depository institution charter unless the application:

7 (a) Is filed by the persons referenced in subsection (2) of Section 4 of this Act;

8 (b) Contains the following:

9 1. Proposed articles of incorporation. The articles of incorporation shall
10 include the following:

11 a. The corporate name, which shall not resemble so closely the
12 name of any other financial institution transacting business in
13 this state so as to cause confusion;

14 b. The purpose or purposes for which the corporation is organized;

15 c. The term of its existence, which may be perpetual;

16 d. The place where its office shall be located and its operations
17 conducted;

18 e. The amount of capital stock and the number of shares;

19 f. The name and residence of, and the number of shares owned by,
20 each shareholder subscribing to more than ten percent (10%) of
21 the stock;

22 g. The number of directors and the names of those who shall
23 manage the affairs of the corporation for the first year; and

24 h. A statement that the corporation shall only engage in activities,
25 and possess powers, authorized under this subtitle;

26 2. The proposed bylaws;

27 3. The identities and contact information of proposed directors and

- 1 officers;
- 2 4. An address, which may be electronic, at which orders and other
- 3 notices may be served by the commissioner;
- 4 5. A detailed business plan;
- 5 6. A comprehensive estimate of operating expenses for the first three (3)
- 6 years of operation;
- 7 7. A complete proposal for compliance with the provisions of this
- 8 subtitle;
- 9 8. Evidence of the capital required under Section 7 of this Act; and
- 10 9. Any other information required by the commissioner; and
- 11 (c) Is accompanied by an application fee established by the commissioner.
- 12 (3) (a) The commissioner may:
- 13 1. Prescribe the form of a special purpose depository institution's charter
- 14 application; and
- 15 2. In his or her discretion, not accept applications that fail to comply
- 16 with the form prescribed by the commissioner.
- 17 (b) The commissioner shall notify the applicants in writing:
- 18 1. Of any deficiency in the application that prevents the commissioner
- 19 from accepting the application; or
- 20 2. That the application has been accepted.
- 21 (4) Upon acceptance of an application for a special purpose depository institution
- 22 charter, the commissioner shall make a careful investigation and examination of
- 23 the following:
- 24 (a) The character, reputation, financial standing, and ability of the organizers;
- 25 (b) The character, financial responsibility, banking or other financial
- 26 experience, and business qualifications of those proposed as officers and
- 27 directors; and

1 (c) The information provided in the application for a charter, including:

2 1. The adequacy and plausibility of the proposed business plan; and

3 2. Whether the proposed institution has offered a complete proposal for
4 compliance with the provisions of this subtitle.

5 (5) The commissioner shall approve a special purpose depository institution charter
6 application if the commissioner makes the following findings that:

7 (a) The following are sufficient to afford reasonable assurance of successful
8 operation for the proposed institution and of compliance with the law:

9 1. The character, reputation, financial standing, and ability of the
10 organizers; and

11 2. The character, financial responsibility, banking or other financial
12 experience, and business qualifications of those proposed as officers
13 and directors;

14 (b) The proposed articles of incorporation and bylaws, as submitted or
15 subsequently amended by the applicants, are sufficient to ensure reasonable
16 compliance with the provisions of this subtitle;

17 (c) The business plan is adequate and plausible;

18 (d) The capital and surplus requirements of Section 7 of this Act have been
19 satisfied;

20 (e) The institution is being formed for no other purpose than legitimate
21 objectives authorized by law; and

22 (f) The applicants have complied with all applicable provisions of state law.

23 (6) The commissioner may conditionally approve a charter application. In the event
24 of conditional approval, the commissioner shall comply with subsection (8) of
25 this section upon satisfaction of the conditions specified by the commissioner for
26 approval. If the conditions specified are not satisfied within a reasonable period
27 of time, or within any time period specified by the commissioner, the

1 commissioner shall deny the application in accordance with subsection (7) of this
2 section.

3 (7) (a) Notice of entry of any order denying an application for a charter under this
4 subtitle shall be:

5 1. In writing and filed by the commissioner in his or her office. The
6 notice shall state the commissioner's findings with respect to the order
7 and the reasons for the action; and

8 2. Served upon the applicants personally or to the address specified in
9 the application for service of the commissioner's orders. Service to the
10 address specified in the application shall be by:

11 a. Certified mail, return receipt requested, postage prepaid; or

12 b. Submission to an electronic mail address, if electronic service is
13 elected by the applicants.

14 (b) Within twenty (20) days from the date of the notice referenced in paragraph
15 (a) of this subsection, the applicants may file, in the office of the
16 commissioner, a written petition requesting a hearing to appeal the
17 decision.

18 (c) Upon the timely filing of an appeal petition under this subsection, an
19 administrative hearing shall be conducted in accordance with KRS Chapter
20 13B.

21 (d) If the applicants do not file a timely appeal under this subsection:

22 1. The applicants shall be deemed to have waived the right to appeal; and

23 2. The commissioner may enter a final order denying the charter.

24 (e) Any person aggrieved by a final order of the commissioner under this
25 subsection may obtain a review of the order in the Circuit Court of the
26 county in which the applicants proposed to conduct business.

27 (f) Service by certified mail under this subsection shall be deemed complete as

1 provided in KRS 13B.050(2).

2 (8) (a) If the commissioner approves an application for a charter under this
3 subtitle, the commissioner shall issue a charter to the special purpose
4 depository institution.

5 (b) Upon issuance of a charter and receipt of any filing fee, in the form
6 prescribed by the commissioner, necessary for filing the articles of
7 incorporation with the Secretary of State, the commissioner shall:

8 1. Endorse upon the articles the commissioner's approval;

9 2. Transmit the approved articles to the Secretary of State, along with
10 any necessary filing fee;

11 3. Retain a copy of the approved articles; and

12 4. Return a copy of the approved articles to the applicants.

13 (9) If a special purpose depository institution fails to commence business in good
14 faith within six (6) months after the issuance of a charter by the commissioner,
15 the institution shall forfeit its corporate existence, by operation of law, at the
16 expiration of the six (6) month period. The commissioner, for good cause and
17 upon application filed by the institution prior to expiration of the six (6) month
18 period, may extend the time within which the special purpose depository
19 institution may commence business. Upon any forfeiture under this subsection,
20 the charter issued by the commissioner shall expire and the institution shall not
21 transact any business, except business that is incidental or necessary to dissolving
22 the institution's corporate existence as provided by law.

23 (10) All amendments to the articles of incorporation of any special purpose depository
24 institution shall be approved by the commissioner before filing with the Secretary
25 of State in the same manner as the original articles of incorporation.

26 ➔SECTION 6. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
27 IS CREATED TO READ AS FOLLOWS:

- 1 (1) Before any special purpose depository institution may transact any business
 2 authorized under this subtitle, each director of the institution shall take an oath
 3 that states in substance:
- 4 (a) That the director is a citizen of the United States, and the State of Kentucky,
 5 or if not, the place of the director's residence;
- 6 (b) That the director will faithfully discharge the duties of the office and
 7 administer the affairs of the institution, so far as the duties of the office
 8 require; and
- 9 (c) That the director will uphold the laws of the state, and particularly the laws
 10 applicable to the institution.
- 11 (2) The oath shall be taken before any officer authorized to administer oaths and
 12 shall be forwarded to the commissioner for filing.
- 13 (3) Upon the election of any subsequent director, or reelection of any director, the
 14 oath shall:
- 15 (a) Be taken;
- 16 (b) Maintained by the institution; and
- 17 (c) Subject to review at examination.
- 18 ➔SECTION 7. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 19 IS CREATED TO READ AS FOLLOWS:
- 20 (1) As used in this section:
- 21 (a) The following have the same meaning as in KRS 286.3-010:
- 22 1. "Capital stock"; and
- 23 2. "Surplus"; and
- 24 (b) "Undivided profits" means the composite of the special purpose depository
 25 institution's net retained earnings from current and prior years' operations.
- 26 (2) The capital of a special purpose depository institution shall be paid in full in
 27 money. None of the original minimum capital of an institution may be designated

1 as undivided profits.

2 (3) (a) The organizers of a special purpose depository institution shall solicit
 3 capital prior to filing an application for a charter with the commissioner,
 4 consistent with this section. In the event an application for a charter is not
 5 filed or is denied by the commissioner, all capital shall be promptly returned
 6 without loss.

7 (b) No special purpose depository institution shall be chartered:

8 1. With capital stock less than five million dollars (\$5,000,000).

9 Additional capital may be required depending upon an investigation of
 10 the application, at the discretion of the commissioner;

11 2. With a paid up surplus of less than three (3) years of estimated
 12 operating expenses, in the amount disclosed in the application for a
 13 charter or in another amount required by the commissioner; and

14 3. Until the full amount of the institution's authorized capital is
 15 subscribed and all capital stock is fully paid.

16 (c) A special purpose depository institution may acquire additional capital prior
 17 to the issuance of a charter and may report this capital in its charter
 18 application.

19 (4) No reduction in the capital stock of a special purpose depository institution shall
 20 be made to an amount less than that required for organization, nor shall any
 21 reduction be valid until it has been approved by the commissioner upon a finding
 22 that the interest of creditors of the institution will not be prejudiced thereby. In no
 23 event, however, shall the capital stock be less than two million five hundred
 24 thousand dollars (\$2,500,000).

25 ➔SECTION 8. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 26 IS CREATED TO READ AS FOLLOWS:

27 (1) Before transacting any business, each special purpose depository institution shall

- 1 pledge or furnish a surety bond, or in lieu of a bond, the institution may
2 irrevocably pledge specified assets, to the commissioner, which shall be in an
3 amount determined by the commissioner that is sufficient to cover costs likely to
4 be incurred by the commissioner in a liquidation of the institution.
- 5 (2) (a) All costs associated with pledging and holding assets under this section
6 shall be the responsibility of the special purpose depository institution.
- 7 (b) Assets pledged under this section shall be unencumbered and shall not
8 serve as collateral for any other purpose.
- 9 (c) Income from assets pledged under this section shall be paid to the special
10 purpose depository institution, unless a liquidation proceeding is initiated in
11 accordance with Section 19 of this Act.
- 12 (3) The surety bond, or pledged assets, shall be of the same nature and quality as the
13 collateral required under KRS 41.240(4).
- 14 (4) Surety bonds shall be:
- 15 (a) Procured from a surety company, or other surety, acceptable to the
16 commissioner;
- 17 (b) In a form prescribed by the commissioner, which shall include a term that
18 provides that the bond may not be terminated without thirty (30) days prior
19 written notice to the commissioner; and
- 20 (c) Payable to the commissioner.
- 21 (5) The commissioner may establish additional investment guidelines or options for
22 the assets or surety bond required under this section.
- 23 (6) (a) If the commissioner at any time reasonably determines that the bond or
24 assets pledged under this section is insecure, deficient in amount, or
25 exhausted in whole or part, the commissioner may by written order require
26 the filing of a new or supplemental bond or pledge of assets in order to
27 secure compliance with this section.

1 **(b) An order entered in accordance with paragraph (a) of this subsection shall**
 2 **designate when compliance with the order is required, except in no case**
 3 **shall an institution be required to comply with an order within thirty (30)**
 4 **days following service of the order.**

5 **(7) In the event of a liquidation, as provided in Section 19 of this Act, the**
 6 **commissioner may, without regard to priorities, preferences, or adverse claims,**
 7 **reduce the surety bond or pledged assets to cash and utilize the cash to defray the**
 8 **costs associated with the liquidation.**

9 ➔SECTION 9. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 10 IS CREATED TO READ AS FOLLOWS:

11 **At all times, a special purpose depository institution shall maintain:**

12 **(1) (a) Unencumbered liquid assets valued at not less than one hundred percent**
 13 **(100%) of the institution's depository liabilities.**

14 **(b) As used in this subsection, "liquid assets" means:**

15 **1. United States currency held:**

16 **a. On the premises of a special purpose depository institution; or**

17 **b. For the special purpose depository institution by a federal**
 18 **reserve bank or a federally insured financial institution; and**

19 **2. Investments that are determined by the commissioner to be highly**
 20 **liquid, which:**

21 **a. Shall include obligations of the United States treasury; and**

22 **b. May include other federal agency obligations;**

23 **(2) (a) A contingency account to account for unexpected losses and expenses.**

24 **(b) The initial capital and surplus established under Section 7 of this Act shall**
 25 **constitute compliance with this subsection for the first three (3) years of the**
 26 **institution's operation.**

27 **(c) After the conclusion of three (3) years, the contingency account shall total**

1 not less than two percent (2%) of the depository liabilities of the special
 2 purpose depository institution, except the commissioner may require a
 3 greater percentage if the commissioner finds that an institution's
 4 contingency account is not adequate and reasonable in light of current and
 5 prospective business conditions; and

6 (3) (a) Appropriate insurance, or a bond, covering the operational risks of the
 7 institution.

8 (b) The coverage required under this subsection shall include:

- 9 1. Directors' and officers' liability coverage;
- 10 2. Errors and omissions liability coverage; and
- 11 3. Liability coverage for information technology infrastructure and
 12 activities.

13 ➔SECTION 10. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 14 IS CREATED TO READ AS FOLLOWS:

15 (1) Except as otherwise provided in subsection (2) of this section, a special purpose
 16 depository institution, including any branch of the institution, shall not offer an
 17 account to, allow an account to be maintained by, or otherwise provide services to
 18 a depositor, or potential depositor, unless the depositor, or potential depositor:

19 (a) Is a legal entity other than a natural person;

20 (b) Is in good standing with the jurisdiction in the United States in which it is
 21 incorporated or organized;

22 (c) Maintains deposits with the institution totaling not less than five thousand
 23 dollars (\$5,000);

24 (d) 1. Is engaged in, or is likely to open, within the next six (6) months, a
 25 bona fide business that is lawful under the laws of Kentucky and the
 26 United States.

27 2. In addition to any requirements specified by federal law, the

1 institution shall require a potential depositor to provide reasonable
 2 evidence that the person is in compliance with this paragraph.

3 3. As used in this paragraph, "reasonable evidence" includes business
 4 entity filings, articles of incorporation or organization, bylaws,
 5 operating agreements, business plans, promotional materials,
 6 financing agreements, or other evidence; and

7 (e) Makes sufficient evidence available to the institution to enable compliance
 8 with anti-money laundering, customer identification, and beneficial
 9 ownership requirements, as determined by the institution.

10 (2) A special purpose depository institution may conduct activities authorized by the
 11 commissioner under subsection (4)(f) or (g) of Section 4 of this Act with a person
 12 that does not meet the requirements of subsection(1)(a) to (d) of this section, if
 13 the person is engaged in activities that are lawful under the laws of Kentucky and
 14 the United States.

15 (3) (a) A special purpose depository institution may require payment of
 16 contributions from depositors to fund the contingency account required
 17 under Section 9 of this Act.

18 (b) A depositor shall obtain a refund of any contingency account contributions
 19 made under paragraph (a) of this subsection after closing an account with
 20 the institution.

21 (4) A special purpose depository institution shall comply with all applicable state and
 22 federal laws, including those relating to anti-money laundering, customer
 23 identification, and beneficial ownership.

24 ➔SECTION 11. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 25 IS CREATED TO READ AS FOLLOWS:

26 (1) Except as provided in subsection (2) of this section, all of the provisions of 286.1-
 27 440 and Subtitle 3 of this chapter, which are applicable to banks and trust

1 companies, shall also be applicable to special purpose depository institutions,
 2 except to the extent that any provision conflicts with a provision in this subtitle, in
 3 which case this subtitle shall control.

- 4 (2) The following provisions of Subtitle 3 of this chapter shall not apply to special
 5 purpose depository institutions:
- 6 (a) KRS 286.3-020;
 - 7 (b) KRS 286.3-025;
 - 8 (c) KRS 286.3-030;
 - 9 (d) KRS 286.3-040;
 - 10 (e) KRS 286.3-050;
 - 11 (f) KRS 286.3-060;
 - 12 (g) KRS 286.3-070;
 - 13 (h) KRS 286.3-080;
 - 14 (i) KRS 286.3-090;
 - 15 (j) KRS 286.3-145 to 286.3-150;
 - 16 (k) KRS 286.3-214 and 286.3-215, except for the provisions that apply to trust
 17 companies, but only for the purpose of applying trust company laws to
 18 special purpose depository institutions permitted to engage in trust business;
 - 19 (l) KRS 286.3-280 and 286.3-290;
 - 20 (m) KRS 286.3-300;
 - 21 (n) KRS 286.3-385;
 - 22 (o) KRS 286.3-450(1);
 - 23 (p) KRS 286.3-710 to 286.3-770;
 - 24 (q) KRS 286.3-820; and
 - 25 (r) KRS 286.3-852.

26 ➔SECTION 12. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 27 IS CREATED TO READ AS FOLLOWS:

- 1 (1) As used in this section, "out-of-state special purpose depository institution"
2 means an institution chartered under the laws of a state other than Kentucky, or
3 the United States, to engage in activities that are substantially similar to the
4 activities authorized for special purpose depository institutions.
- 5 (2) Subject to the provisions of this section, a special purpose depository institution
6 may establish or acquire a branch:
- 7 (a) Within this state; and
8 (b) Within any other state, the District of Columbia, or a territory of the United
9 States.
- 10 (3) A special purpose depository institution, except for an institution the
11 commissioner may designate by administrative regulation, shall apply to the
12 commissioner for permission to establish or acquire a branch. Before the
13 commissioner shall approve or deny any application made under this section, the
14 commissioner shall ascertain and determine that:
- 15 (a) The public convenience and advantage will be served and promoted by
16 establishment or acquisition of the branch; and
17 (b) There is reasonably probability of the successful operation of the branch
18 based upon the financial and managerial impact of the branch on the
19 institution establishing or acquiring the branch.
- 20 (4) (a) An out-of-state special purpose depository institution may establish or
21 acquire a branch in this state only if the institution receives prior written
22 approval from the commissioner to do so.
- 23 (b) The out-of-state special purpose depository institution shall:
- 24 1. Make an application to the commissioner on a form prescribed by the
25 commissioner. The application shall include:
- 26 a. The name of the out-of-state special purpose depository
27 institution; and

- 1 **b. The location of the proposed branch or branches;**
- 2 **2. Furnish the commissioner with:**
- 3 **a. A copy of the resolution adopted by the institution's board of**
- 4 **directors authorizing the branch;**
- 5 **b. Evidence of compliance with the requirements of:**
- 6 **i. The institution's home state regulator and home state law**
- 7 **for establishing or acquiring the branch; and**
- 8 **ii. Kentucky law, relating to qualification as a foreign entity**
- 9 **doing business in Kentucky; and**
- 10 **c. Any other information requested by the commissioner to assist**
- 11 **the commissioner in determining compliance with this subtitle;**
- 12 **and**
- 13 **3. Pay the filing fee, if any, prescribed by the commissioner.**
- 14 **(c) The commissioner shall approve an application made by an out-of-state**
- 15 **special purpose depository institution if:**
- 16 **1. Special purpose depository institutions are permitted to establish and**
- 17 **acquire branches, and engage in activities that are substantially**
- 18 **similar to the activities authorized under this subtitle, in the state**
- 19 **where the out-of-state special purpose depository institution has its**
- 20 **principal office; and**
- 21 **2. The commissioner determines that:**
- 22 **a. The public convenience and advantage will be served and**
- 23 **promoted by establishment or acquisition of the branch;**
- 24 **b. There is reasonably probability of the successful operation of the**
- 25 **branch based upon the financial and managerial impact of the**
- 26 **branch on the establishing or acquiring institution;**
- 27 **c. The proposed branch is authorized under applicable law; and**

1 d. The applicant has complied with the requirements of this
2 section.

3 (d) An out-of-state special purpose depository institution that establishes or
4 acquires a branch in this state shall confirm in writing to the commissioner,
5 prior to commencing business in this state, and at least annually thereafter,
6 that for so long as the institution maintains a branch in this state, the
7 institution will comply with all applicable laws of this state.

8 (5) The following conditions shall apply to all branch applications and branch
9 approvals:

10 (a) The permission to establish or acquire a branch shall lapse one (1) year
11 after the commissioner has rendered a final order as defined in KRS
12 13B.010, unless, prior to expiration of the one (1) year period, business is
13 actually begun at the branch in good faith. If, for reasons beyond the
14 control of the applicant, business at the branch is not commenced within
15 this time period, permission to establish or acquire the branch may, with the
16 approval of the commissioner, be extended for any period of time the
17 commissioner deems to be necessary; and

18 (b) An application to establish or acquire a branch shall be approved or denied
19 by the commissioner based upon the facts existing at the date of filing of the
20 application, except for the financial condition of the applicant, which shall
21 be subject to review until an order ruling on the application is made.

22 (6) Except as permitted by the commissioner, any special purpose depository
23 institution, including an out-of-state special purpose depository institution, with
24 branch offices in Kentucky shall use at all times the same name for all its branch
25 offices in Kentucky. The commissioner shall permit the limited use of a different
26 name at one (1) or more branches, upon written request, when necessary to avoid
27 customer confusion.

1 (7) The provisions of KRS 286.3-180, KRS 286.3-183, and any other provision of
 2 Subtitle 3 of this chapter that regulates, or authorizes, bank branching, shall also
 3 be applicable to the branching of business authorized under this subtitle, except
 4 to the extent that any provision conflicts with a provision in this subtitle, in which
 5 case this subtitle shall control.

6 ➔SECTION 13. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 7 IS CREATED TO READ AS FOLLOWS:

8 Any person aggrieved by a decision of the commissioner under this subtitle may, within
 9 twenty (20) days of service of notice of the decision, request an administrative hearing,
 10 which shall be conducted in accordance with KRS Chapter 13B.

11 ➔SECTION 14. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 12 IS CREATED TO READ AS FOLLOWS:

13 The commissioner shall adopt all administrative regulations necessary to implement
 14 the provisions of this subtitle.

15 ➔SECTION 15. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 16 IS CREATED TO READ AS FOLLOWS:

17 (1) As used in this section, "FDIC" means the Federal Deposit Insurance
 18 Corporation.

19 (2) (a) Special purpose depository institutions shall not be required to obtain FDIC
 20 insurance for their deposits.

21 (b) Nothing in this subsection shall be construed as prohibiting a special
 22 purpose depository institution from obtaining FDIC insurance, if available.

23 (3) If the deposits of a special purpose depository institution are not insured by the
 24 FDIC, the institution shall:

25 (a) Display on any internet website it maintains, and at each window or place
 26 where it accepts deposits, a sign conspicuously stating that the deposits are
 27 not insured by the FDIC;

1 (b) Upon opening an account, require each depositor making a deposit to
 2 execute a statement, which shall be permanently retained by the institution,
 3 acknowledging that the deposit is not insured by the FDIC; and

4 (c) Include, in all advertising, a disclosure that the deposits are not insured by
 5 the FDIC.

6 ➔SECTION 16. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 7 IS CREATED TO READ AS FOLLOWS:

8 Every special purpose depository institution, and branch of an out-of-state special
 9 purpose depository institution doing business in this state, shall be subject to the same
 10 inspection and examination requirements, and fees, as banks under Subtitle 3 of this
 11 chapter, except:

12 (1) The examination schedule for special purpose depository institutions shall be
 13 established by the commissioner through the promulgation of an administrative
 14 regulation; and

15 (2) The commissioner may establish different fee schedules for special purpose
 16 depository institutions in accordance with KRS 286.3-480 or any other applicable
 17 fee provision under this subtitle or Subtitle 3 of this chapter.

18 ➔SECTION 17. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
 19 IS CREATED TO READ AS FOLLOWS:

20 (1) The commissioner may suspend or revoke the charter of a special purpose
 21 depository institution, or the approval granted to an out-of-state special purpose
 22 depository institution under Section 12 of this Act if, after notice and hearing
 23 conducted in accordance with KRS Chapter 13B, the commissioner determines
 24 that:

25 (a) The institution has failed to, or refused to, comply with an order of the
 26 commissioner issued under this subtitle or any other applicable law;

27 (b) The application for a charter, or a branch, contained a false statement of

- 1 material misrepresentation or material omission; or
- 2 (c) An officer, director, or agent of the institution, in connection with a charter
- 3 or branch application, examination, report, or other document filed with the
- 4 commissioner, knowingly made a false statement, material
- 5 misrepresentation, or material omission to the commissioner or a duly
- 6 authorized agent of the commissioner.
- 7 (2) If the charter of a special purpose depository institution is surrendered,
- 8 suspended, or revoked, the institution shall continue to be subject to the
- 9 provisions of this chapter during any liquidation or receivership.
- 10 (3) In addition to the remedies provided under KRS 286.3-690, each officer, director,
- 11 employee, or agent of a special purpose depository institution may be removed
- 12 from office by order of the commissioner if the officer, director, employee, or
- 13 agent knowingly or willfully fails to:
- 14 (a) Perform any duty required by this subtitle or other applicable law; or
- 15 (b) Conform to any administrative regulation or order issued by the
- 16 commissioner.

17 ➔SECTION 18. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

18 IS CREATED TO READ AS FOLLOWS:

- 19 (1) If the commissioner has reason to believe that the capital of any special purpose
- 20 depository institution is impaired, the commissioner shall examine the institution
- 21 and ascertain the facts. If the commissioner finds an impairment of capital, the
- 22 commissioner shall provide written notice to each director of the institution and
- 23 require the institution to repair the deficiency within sixty (60) days after the date
- 24 of notice.
- 25 (2) (a) Within fifteen (15) days from the date of notice made under subsection (1)
- 26 of this section, the directors shall levy an assessment upon the common
- 27 stock of the institution to repair the deficiency. Written notice of the

1 deficiency, and the amount of the assessment, shall be provided to each
2 shareholder, which may, with prior consent of the shareholder, be by
3 electronic transmission.

4 (b) If any shareholder fails to pay the assessment levied under paragraph (a) of
5 this subsection within thirty (30) days of receiving the notice, the directors
6 may sell the stock of the shareholder to the highest bidder at public auction
7 or by private sale.

8 (c) Notice of a public auction under this subsection shall be published for ten
9 (10) days in a newspaper of general circulation published in the county
10 where the institution is located and a copy of the notice of sale shall be
11 served upon the shareholder.

12 (d) If stock is sold by private sale under this subsection, the directors shall
13 obtain a written offer for the stock and serve that offer upon the
14 shareholder. If, after service of the offer, the shareholder still fails to pay
15 the assessment within fourteen (14) days from the date of service of the
16 offer, the directors may accept the private offer or a larger offer.

17 (e) In no event shall stock be sold under this subsection for less than the
18 amount of the assessment and cost of sale. The directors shall pay the
19 assessment out of the sale proceeds, with any remainder first being applied
20 to the cost of sale and second being paid to the shareholder.

21 (f) Service under this subsection shall be personally or by mail at the
22 shareholder's last known address.

23 (3) If any board of directors fails to timely comply with an order issued under
24 subsection (1) of this section, the commissioner shall immediately take possession
25 of the institution and proceed to liquidate as provided in Section 19 of this Act.

26 ➔SECTION 19. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286
27 IS CREATED TO READ AS FOLLOWS:

1 (1) As used in this section:

2 (a) "Failed" or "failure" means, consistent with any administrative
 3 regulations promulgated by the commissioner, a circumstance when a
 4 special purpose depository institution has not:

5 1. Complied with the requirements of subsections (1) or (2) of Section 9
 6 of this Act; or

7 2. Paid, in the manner commonly accepted by business practices:

8 a. Its legal obligations to depositors on demand; or

9 b. To discharge any certificates of deposit, promissory notes, or
 10 other indebtedness when due; and

11 (b) "Unsafe or unsound condition" means, consistent with any administrative
 12 regulations promulgated by the commissioner, a circumstance relating to a
 13 special purpose depository institution, which is likely to:

14 1. Cause the failure of the institution;

15 2. Cause a substantial dissipation of assets or earnings;

16 3. Substantially disrupt the services provided by the institution to
 17 depositors; or

18 4. Otherwise substantially prejudice the depository interests of
 19 depositors.

20 (2) If the commissioner finds that a special purpose depository institution has failed,
 21 is operating in an unsafe or unsound condition, or meets any of the conditions set
 22 forth in KRS 286.3-854(1), and the condition has not been remedied within the
 23 time prescribed under Section 18 of this Act, or in an order issued under KRS
 24 286.3-690, the commissioner shall close the institution for purposes of
 25 liquidation, which shall be conducted in accordance with KRS 286.3-850 and
 26 KRS 286.3-854 to 286.3-884.

27 ➔SECTION 20. A NEW SECTION OF SUBTITLE 12 OF KRS CHAPTER 286

1 IS CREATED TO READ AS FOLLOWS:

2 (1) A special purpose depository institution may voluntarily dissolve in accordance
3 with the provisions of this section.

4 (2) Voluntary dissolution shall be accomplished by either:

5 (a) Liquidating the institution; or

6 (b) Reorganizing the institution into an appropriate business entity that does
7 not transact business in accordance with this subtitle.

8 (3) A voluntary dissolution shall provide for the discharge or assumption of all
9 known and unknown claims and liabilities of the institution.

10 (4) Upon completion of the liquidation or reorganization, the institution shall
11 surrender its charter.

12 (5) A special purpose depository institution seeking to dissolve under this section
13 shall:

14 (a) File an application for voluntary dissolution with the commissioner; and

15 (b) Pay the filing fee, if any, established by the commissioner.

16 (6) The application required under subsection (5) of this section shall:

17 (a) Be in a form prescribed by the commissioner; and

18 (b) Include:

19 1. A comprehensive plan for dissolution that sets forth the proposed
20 disposition of all assets and liabilities, in reasonable detail to effect a
21 liquidation or reorganization;

22 2. The timetable for effective disposition of the assets and liabilities of
23 the institution;

24 3. A proposal for addressing any claims that are asserted after
25 dissolution has been completed; and

26 4. Any other evidence, certifications, affidavits, documents, or
27 information required by the commissioner.

- 1 (7) (a) The commissioner shall examine the application filed under this section for
2 compliance with:
3 1. This section; and
4 2. The business entity laws applicable to the required type of dissolution.
5 (b) The commissioner may conduct a special examination for purposes of
6 evaluating the application.
- 7 (8) If the commissioner finds that an application filed under this section is
8 incomplete, the commissioner shall return the application to the institution for
9 completion. If the application is not completed and re-filed with the
10 commissioner within sixty (60) days after the return, the application shall be
11 deemed abandoned.
- 12 (9) (a) If the application is found to be complete by the commissioner, the
13 commissioner shall conditionally approve, or deny, the application not later
14 than thirty (30) days after the date of filing.
15 (b) A conditional approval may set forth additional conditions that must be
16 satisfied by the institution in order to obtain a voluntary dissolution under
17 this section.
- 18 (10) (a) If the application is conditionally approved by the commissioner, the
19 institution shall proceed with the dissolution in accordance with the plan
20 outlined in the application, subject to any conditions the commissioner has
21 prescribed.
22 (b) An institution may file a request with the commissioner for approval to
23 amend the voluntary dissolution plan after it has been conditionally
24 approved by the commissioner.
- 25 (11) (a) Upon completion of all actions required under the commissioner's
26 conditional approval, the institution shall submit a written report of its
27 actions to the commissioner.

- 1 (b) The report shall contain a certification made under oath that the report is
2 true and correct.
- 3 (c) Within sixty (60) days of receipt of the report, the commissioner shall
4 examine the institution to determine whether the commissioner is satisfied
5 that all required actions have been taken.
- 6 (d) The commissioner shall, within thirty (30) days of the examination required
7 under paragraph (c) of this subsection, notify the institution, in writing,
8 whether he or she is satisfied that all actions required for voluntary
9 dissolution have been taken.
- 10 (e) Upon receipt of notice that the commissioner is satisfied that all actions
11 required for voluntary dissolution have been taken, the institution shall:
12 1. Surrender its charter to the commissioner; and
13 2. Take all steps necessary to complete the dissolution or reorganization
14 of the institution's corporate existence as provided by law.
- 15 (12) (a) If, after the examination conducted under subsection 11(c) of this section,
16 the commissioner determines that all actions required for voluntary
17 dissolution have not been taken, the commissioner shall notify the
18 institution, in writing, within thirty (30) days of the examination, what
19 additional actions shall be taken, along with reasonable deadlines for
20 taking those actions, in order for the institution to be eligible for voluntary
21 dissolution under this section.
- 22 (b) For good cause shown, the commissioner may extend any deadlines
23 established under paragraph (a) of this subsection.
- 24 (c) If the institution fails to file a supplemental report showing that all
25 additional actions have been taken on or before the deadlines established by
26 the commissioner, or submits a report that is found not to be satisfactory by
27 the commissioner, the commissioner shall notify the institution in writing

1 *that the institution's conditional approval has been revoked and that the*
2 *application for a voluntary dissolution under this section is denied.*

3 ➔Section 21. KRS 286.1-011 is amended to read as follows:

- 4 (1) There is created within the Public Protection Cabinet a Department of Financial
5 Institutions, which shall be headed by a commissioner of financial institutions, who
6 shall be the executive head of the department and shall be charged with the
7 administration of the department.
- 8 (2) The Department of Financial Institutions shall exercise all administrative functions
9 of the state in relation to the regulation, supervision, chartering, and licensing of
10 banks, trust companies, savings and loan associations, consumer loan companies,
11 ~~investment and~~ industrial loan companies, ~~and~~ credit unions, *all other persons*
12 *regulated under this chapter, securities,* and *all persons regulated under KRS*
13 *Chapter 292*~~[in relation to the regulation of securities].~~
- 14 (3) There are established within the Department of Financial Institutions the following
15 divisions:
- 16 (a) The Division of Depository Institutions, which shall be headed by a director
17 appointed by the secretary of the Public Protection Cabinet in accordance with
18 KRS 12.050. The division shall consist of entities deemed appropriate by the
19 director;
- 20 (b) The Division of Non-Depository Institutions, which shall be headed by a
21 director appointed by the secretary of the Public Protection Cabinet in
22 accordance with KRS 12.050. The division shall consist of entities deemed
23 appropriate by the director; and
- 24 (c) The Division of Securities, which shall be headed by a director appointed by
25 the secretary of the Public Protection Cabinet in accordance with KRS 12.050.
26 The division shall consist of entities deemed appropriate by the director.
- 27 (4) The department may accept any application or other document required to be filed

1 with the department in electronic format or in any other technology acceptable to
2 the department.

3 ➔Section 22. KRS 286.2-040 is amended to read as follows:

4 (1) As used in this section:

5 (a) "Covered service" means:

- 6 1. Data processing;
- 7 2. Any activity that supports financial services, including but not limited to
8 lending, funds transfer, fiduciary activity, trading activity, and deposit
9 taking; and
- 10 3. Internet-related services, including but not limited to Web services and
11 electronic bill payments, mobile applications, system and software
12 development and maintenance, and security monitoring;

13 (b) "Depository institution" means any:

- 14 1. State bank as defined in KRS 286.3-010;
- 15 2. Branch of an out-of-state bank as defined in KRS 286.3-010 that is
16 doing business under the laws of this state;
- 17 3. Trust company as defined in KRS 286.3-010;~~[-or]~~
- 18 4. Credit union as defined in KRS 286.6-005;

19 5. Special purpose depository institution as defined in Section 2 of this

20 Act; or

21 6. Branch of an out-of-state special purpose depository institution as
22 defined in Section 12 of this Act that is doing business under the laws
23 of this state; and

24 (c) "Service provider" means any person that provides a covered service listed in
25 paragraph (a) of this subsection to a depository institution, except any:

- 26 1. Bank service company that is examined and regulated by the appropriate
27 federal banking agency. For the purposes of this subparagraph, "bank

- 1 service company" and "appropriate federal banking agency" have the
2 meanings set forth in the Bank Service Company Act, 12 U.S.C. sec.
3 1861, as amended, or any successor statute;
- 4 2. Depository institution, holding company of a depository institution, or
5 subsidiary of that holding company; and
- 6 3. Federally chartered depository institution, holding company of a
7 federally chartered depository institution, or subsidiary of that holding
8 company. For the purposes of this subparagraph, "federally chartered
9 depository institution" means a bank, savings association, or credit union
10 organized pursuant to the laws of the United States.
- 11 (2) The commissioner may examine a service provider for any covered service it
12 provides to a depository institution if the examination is conducted in conjunction
13 with an examination conducted by a properly authorized federal regulatory agency.
- 14 (3) The commissioner may accept an examination made by other properly authorized
15 state or federal regulatory agencies that have concurrent jurisdiction over a service
16 provider in lieu of any examination authorized or required under the laws of this
17 state.
- 18 (4) A report of examination and related correspondence shall be considered confidential
19 information. No person shall release any information contained in the examination
20 unless required by court order. Notwithstanding this subsection, the department may
21 furnish:
- 22 (a) A copy of a report of examination performed by the commissioner of the
23 condition and affairs of any service provider to the depository institutions
24 serviced by the service provider; and
- 25 (b) To and exchange information and reports of examinations with officials and
26 examiners of other properly authorized state or federal regulatory agencies.
- 27 (5) Every official report concerning a service provider, and every report of examination,

1 shall be prima facie evidence of the facts contained in the report for any purpose in
2 any action in which the department or service provider is a party.

3 (6) The commissioner shall fix a scale of examination fees to be paid by service
4 providers. The fees shall be:

5 (a) Sufficient to cover the cost of the examination based upon a fair compensation
6 for time and actual expense;

7 (b) Assessed and paid by service providers promptly after completion of the
8 examination; and

9 (c) Set by administrative regulation.

10 (7) The commissioner may enter into cooperative agreements with other properly
11 authorized state or federal regulatory agencies that have concurrent jurisdiction over
12 a service provider to facilitate the examination process, including joint examination,
13 scheduling, resources, fee collection and sharing, report of examination processing,
14 and enforcement actions.

15 ➔Section 23. KRS 286.2-685 is amended to read as follows:

16 (1) No person may use the term "bank," "banker," "banking," "trust," or a similar term
17 or a character, ideogram, phonogram, phrase, or foreign language word in its name,
18 stationery, or advertising in a manner that would imply to the public that the person
19 is engaged in the banking or trust business.

20 (2) Subsection (1) of this section does not apply to a depository institution or other
21 entity organized under the laws of this state, another state, or the United States to
22 the extent that the depository institution or other entity is:

23 (a) Authorized under its charter or the laws of this state or the United States to
24 use a term, word, character, ideogram, phonogram, or phrase prohibited by
25 subsection (1) of this section; and

26 (b) Authorized by the laws of this state or the United States to conduct the
27 activities in which it is engaged in this state.

- 1 (3) For purposes of this section, unless the context requires otherwise, "financial
2 institution" means any person or entity operating in the Commonwealth of
3 Kentucky, as permitted under the laws of this state, any other state, or the United
4 States, as a bank, bank holding company, credit union, savings and loan association,
5 special purpose depository institution, or any wholly owned subsidiary thereof.
- 6 (4) Except as provided in subsection (5) of this section, no person that is not a financial
7 institution may use the trade name, trademark, service mark, logo, or symbol, or any
8 combination thereof, of any financial institution, or any trade name, trademark,
9 service mark, logo, or symbol, or any combination thereof, that is similar to the
10 trade name, trademark, service mark, logo, or symbol of such a financial institution,
11 in any marketing material, solicitation, or advertising provided or directed to
12 another person in a manner such that a reasonable person may be confused,
13 mistaken, or deceived that the marketing material, solicitation, or advertising
14 originated from, is endorsed by, or has been consented to by the financial
15 institution.
- 16 (5) Subsection (4) of this section shall not apply to a person who uses the trade name,
17 trademark, service mark, logo, or symbol of a financial institution with the written
18 consent of the financial institution.
- 19 (6) The financial institution whose trade name, trademark, service mark, logo, or
20 symbol has been used in violation of this section may institute an action in the
21 Franklin Circuit Court or any court of competent jurisdiction against any person or
22 entity in violation of subsection (4) of this section to enjoin a continuance of any
23 activity in violation of subsection (4) of this section and, if injured thereby, for the
24 recovery of damages at three (3) times the amount of any actual damages sustained
25 and for civil penalties in the amount of one thousand dollars (\$1,000). It shall not be
26 necessary that actual damages be alleged or proved in order to recover injunctive
27 relief or civil penalties. The penalties prescribed by this subsection shall be

1 cumulative.

2 ➔Section 24. The commissioner shall promulgate administrative regulations to
3 implement the provisions of this Act on or before October 1, 2021.

4 ➔Section 25. Except for Section 24, this Act takes effect on October 1, 2021.