

**HOUSE BILL No. 2560**

By Committee on Financial Institutions and Pensions

Requested by Brock Roehler on behalf of the State Bank Commissioner

1-22

1 AN ACT concerning financial institutions; relating to the state banking  
2 code; providing when an application is considered abandoned or  
3 expired; allowing an originating trustee to have such trustee's principal  
4 place of business outside of Kansas; amending K.S.A. 9-535, 9-806, 9-  
5 1721 and 9-2107 and repealing the existing sections.  
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 9-535 is hereby amended to read as follows: 9-535.

9 (a) The commissioner shall approve the application if the commissioner  
10 determines that the application favorably meets each and every factor  
11 prescribed in K.S.A. 9-534, and amendments thereto, the proposed  
12 acquisition is in the interest of the depositors and creditors of the Kansas  
13 state chartered bank or bank holding company that has an ownership  
14 interest in a Kansas state chartered bank ~~which~~ *that* is the subject of the  
15 proposed acquisition and in the public interest generally. ~~Otherwise, the~~  
16 ~~application shall be denied.~~

17 (b) If the commissioner denies the application, the applicant shall  
18 have the right to a hearing before the state banking board to be conducted  
19 in accordance with the Kansas administrative procedure act. The state  
20 banking board shall render the board's decision affirming or rescinding the  
21 determination of the commissioner. Any action of the state banking board  
22 pursuant to this section is subject to review in accordance with the Kansas  
23 judicial review act.

24 Sec. 2. K.S.A. 9-806 is hereby amended to read as follows: 9-806. (a)  
25 *If the applicant fails to complete any application under the state banking*  
26 *code within 60 days after being notified that the application is incomplete,*  
27 *such application shall be considered abandoned and the application fee*  
28 *shall not be refunded. An applicant whose application is abandoned under*  
29 *this section may reapply at any time.*

30 (b) *Except as provided by subsection (c), the bank or trust company*  
31 *shall engage in the activity requiring an application and approval by the*  
32 *commissioner or state banking board within 18 months from the date of*  
33 *approval. If the bank or trust company fails to engage in the activity*  
34 *within 18 months from the date of the approval, the application shall be*  
35 *deemed expired and a new application, application fee and approval is*

1 *required. The provisions of this subsection do not apply to applications*  
2 *approved under K.S.A. 9-1601, and amendments thereto.*

3 (c) Any newly organized bank or trust company ~~which~~ that did not  
4 begin business within 120 days after a certificate of authority has been  
5 issued to such bank or trust company by the commissioner shall not  
6 engage in the banking business or the business of a trust company without  
7 again obtaining a certificate of authority from the commissioner.

8 (d) *The commissioner may extend the deadline under subsection (b)*  
9 *or (c):*

10 (1) *Indefinitely, if approval from another state or federal regulator is*  
11 *necessary for the bank or trust company to engage in the activity; or*

12 (2) *up to 180 days for good cause.*

13 (e) *The state banking board may designate the commissioner to*  
14 *determine the completeness of any application requiring state banking*  
15 *board approval or deem as expired any state banking board approved*  
16 *application.*

17 Sec. 3. K.S.A. 9-1721 is hereby amended to read as follows: 9-1721.

18 (a) The person proposing to acquire control of a bank or trust company  
19 undertaking a merger transaction, hereinafter referred to as the applicant,  
20 shall file ~~an~~ a *complete* application with the commissioner at least 60 days  
21 prior to the proposed change of control or merger transaction. If the  
22 commissioner does not act on the *complete* application within the 60-day  
23 time period *and the applicant has received approval from all other*  
24 *applicable federal and state agencies*, the application shall stand approved.  
25 The commissioner may, for any reason, extend the time period to act on an  
26 application for an additional 30 days. The time period to act on an  
27 application may be further extended if the commissioner determines that  
28 the applicant has not furnished all the information required under K.S.A.  
29 9-1722, and amendments thereto, or that, in the commissioner's judgment,  
30 any material information submitted is substantially inaccurate. The  
31 commissioner may waive the 60-day prior notice requirement if the  
32 acquired bank or trust company is under a formal corrective action.

33 (b) Upon the filing of an application, the commissioner shall make an  
34 investigation of the applicant for the change of control or merger  
35 transaction. The commissioner may deny the application if the  
36 commissioner finds the:

37 (1) Proposed change of control or merger transaction would result in  
38 a monopoly or would be in furtherance of any combination or conspiracy  
39 to monopolize or attempt to monopolize the business of banking or trust  
40 services in any part of this state;

41 (2) financial condition of the applicant might jeopardize the financial  
42 stability of the bank or trust company or prejudice the interests of the  
43 depositors of a bank;

1 (3) competence, experience or integrity of the applicant or of any of  
2 the proposed management personnel of the bank or trust company or  
3 resulting bank or trust company indicates it would not be in the interest of  
4 the depositors of the bank, the clients of trust services, or in the interest of  
5 the public; or

6 (4) applicant neglects, fails or refuses to furnish the commissioner  
7 with all of the information required by the commissioner.

8 (c) Upon service of an order denying an application, the applicant  
9 shall have the right to a hearing to be conducted in accordance with the  
10 Kansas administrative procedure act before the state banking board. Any  
11 final order of the commissioner pursuant to this section is subject to  
12 review in accordance with the Kansas judicial review act.

13 Sec. 4. K.S.A. 9-2107 is hereby amended to read as follows: 9-2107.

14 (a) As used in this section:

15 (1) "Contracting trustee" means any trust company, as defined in  
16 K.S.A. 9-701, and amendments thereto, any bank that has been granted  
17 trust authority by the commissioner under K.S.A. 9-1602, and amendments  
18 thereto, any national bank chartered to do business in Kansas that has been  
19 granted trust authority by the comptroller of the currency under 12 U.S.C.  
20 § 92a, any bank that has been granted trust authority or any trust company,  
21 regardless of where such bank or trust company is located, that is  
22 controlled, as defined in K.S.A. 9-1612, and amendments thereto, by the  
23 same bank holding company as any trust company, state bank or national  
24 bank chartered to do business in Kansas, which accepts or succeeds to any  
25 fiduciary responsibility as provided in this section;

26 (2) "originating trustee" means any trust company, bank, national  
27 banking association, savings and loan association or savings bank ~~which~~  
28 *that* has trust powers ~~and its principal place of business is in this state and~~  
29 ~~which~~ places or transfers any fiduciary responsibility to a contracting  
30 trustee as provided in this section; and

31 (3) "financial institution" means any bank, national banking  
32 association, savings and loan association or savings bank ~~which~~ *that* has  
33 its principal place of business in this state but ~~which~~ *that* does not have  
34 trust powers.

35 (b) Any contracting trustee and any originating trustee may enter into  
36 an agreement by which the contracting trustee, without any further  
37 authorization of any kind, succeeds to and is substituted for the originating  
38 trustee as to all fiduciary powers, rights, duties, privileges and liabilities  
39 with respect to all accounts for which the originating trustee serves in any  
40 fiduciary capacity, except as may be provided otherwise in the agreement.  
41 Notwithstanding the provisions of this section, ~~no contracting trustee with~~  
42 ~~a home office outside the state of Kansas shall enter into an agreement~~  
43 ~~except with an originating trustee which is commonly controlled as~~

1 ~~defined in K.S.A. 9-1612, and amendments thereto, by the same bank~~  
2 ~~holding company either the contracting trustee or the originating trustee~~  
3 ~~shall have its principal place of business in this state.~~

4 (c) Unless the agreement expressly provides otherwise, upon the  
5 effective date of the substitution:

6 (1) The contracting trustee shall be deemed to be named as the  
7 fiduciary in all writings, including, without limitation, trust agreements,  
8 wills and court orders, which pertain to the affected fiduciary accounts;  
9 and

10 (2) the originating trustee is absolved from all fiduciary duties and  
11 obligations arising under such writings and shall discontinue the exercise  
12 of any fiduciary duties with respect to such writings, except that the  
13 originating trustee is not absolved or discharged from any duty to account  
14 required by K.S.A. 59-1709, and amendments thereto, or any other  
15 applicable statute, rule of law, rules and regulations or court order, nor  
16 shall the originating trustee be absolved from any breach of fiduciary duty  
17 or obligation occurring prior to the effective date of the agreement.

18 (d) The agreement may authorize the contracting trustee:

19 (1) To establish a trust service desk at any office of the originating  
20 trustee at which the contracting trustee may conduct any trust business and  
21 any business incidental thereto and which the contracting trustee may  
22 otherwise conduct at its principal place of business; and

23 (2) to engage the originating trustee as the agent of the contracting  
24 trustee, on a disclosed basis to customers, for the purposes of providing  
25 administrative, advertising and safekeeping services incident to the  
26 fiduciary services provided by the contracting trustee.

27 (e) Any contracting trustee may enter into an agreement with a  
28 financial institution providing that the contracting trustee may establish a  
29 trust service desk as authorized by subsection (d) in the offices of such  
30 financial institution and which provides such financial institution, on a  
31 disclosed basis to customers, may act as the agent of contracting trustee for  
32 purposes of providing administrative services and advertising incident to  
33 the fiduciary services to be performed by the contracting trustee.

34 (f) No activity authorized by subsections (b) through (e) shall be  
35 conducted by any contracting trustee, originating trustee or financial  
36 institution until an application for such authority has been submitted to and  
37 approved by the commissioner. The application shall be in the form and  
38 contain the information required by the commissioner, which shall at a  
39 minimum include certified copies of the following documents:

40 (1) The agreement;

41 (2) the written action taken by the board of directors of the  
42 originating trustee or financial institution approving the agreement;

43 (3) all other required regulatory approvals;

1 (4) proof of publication of notice that the applicant intends to file or  
2 has filed an application pursuant to this section. The notice shall be  
3 published in a newspaper of general circulation in the county where the  
4 principal office of the originating trustee or financial institution is located.  
5 The notice shall be in the form prescribed by the commissioner and shall  
6 contain the name of the applicant contracting trustee and the originating  
7 trustee, and a solicitation for written comments. The notice shall be  
8 published on the same day for two consecutive weeks and provide for a  
9 comment period of not less than 10 days after the date of the second  
10 publication; and

11 (5) a certification by the parties to the agreement that written notice  
12 of the proposed substitution was sent by first-class mail to each co-  
13 fiduciary, each surviving settlor of a trust, each ward of a guardianship,  
14 each person that has sole or shared power to remove the originating trustee  
15 as fiduciary and each adult beneficiary currently receiving or entitled to  
16 receive a distribution of principle or income from a fiduciary account  
17 affected by the agreement, and that such notice was sent to each such  
18 person's address as shown in the originating trustee's records. An  
19 unintentional failure to give such notice shall not impair the validity or  
20 effect of any such agreement, except an intentional failure to give such  
21 notice shall render the agreement null and void as to the party not  
22 receiving the notice of substitution.

23 (g) A contracting trustee making application to the commissioner for  
24 approval of any agreement pursuant to this section shall pay to the  
25 commissioner a fee, in an amount established pursuant to K.S.A. 9-1726,  
26 and amendments thereto, to defray the expenses of the commissioner in  
27 the examination and investigation of the application. The commissioner  
28 shall remit all moneys received under this section to the state treasurer in  
29 accordance with the provisions of K.S.A. 75-4215, and amendments  
30 thereto. Upon receipt of each such remittance, the state treasurer shall  
31 deposit the entire amount in the state treasury to the credit of the bank  
32 investigation fund. The moneys in the bank investigation fund shall be  
33 used to pay the expenses of the commissioner, or designee, in the  
34 examination and investigation of such applications and any unused balance  
35 shall be transferred to the bank commissioner fee fund.

36 (h) Upon the filing of a complete application with the commissioner,  
37 the commissioner shall make or cause to be made, a careful examination  
38 and investigation of the proposed agreement. If the commissioner finds  
39 any of the following matters unfavorably, the commissioner may deny the  
40 application:

41 (1) The reasonable probability of usefulness and success of the  
42 contracting trustee; and

43 (2) the financial history and condition of the contracting trustee

1 including the character, qualifications and experience of the officers  
2 employed by the contracting trustee.

3 (i) The commissioner shall render approval or disapproval of the  
4 application within 90 days of receiving a complete application.

5 (j) Upon service of an order denying an application, the applicant  
6 shall have the right to a hearing to be conducted in accordance with the  
7 Kansas administrative procedure act before the state banking board. Any  
8 final order of the commissioner pursuant to this section is subject to  
9 review in accordance with the Kansas judicial review act.

10 (k) When the commissioner determines that any contracting trustee  
11 domiciled in this state has entered into a contracting agreement in violation  
12 of the laws governing the operation of such contracting trustee, the  
13 commissioner may take such action as available under K.S.A. 9-1714, 9-  
14 1805, 9-1807 or 9-1809, and amendments thereto, to remedy such  
15 violation.

16 (l) Any party entitled to receive a notice under subsection (f)(5) may  
17 file a petition in the court having jurisdiction over the fiduciary  
18 relationship, or if none, in the district court in the county where the  
19 originating trustee has its principal office, seeking to remove any  
20 contracting trustee substituted or about to be substituted as fiduciary  
21 pursuant to this section. Unless the contracting trustee files a written  
22 consent to its removal or a written declination to act subsequent to the  
23 filing of the petition, the court, upon notice and hearing, shall determine  
24 the best interest of the petitioner and all other parties concerned and shall  
25 fashion such relief as the court deems appropriate in the circumstances,  
26 including the awarding of reasonable attorney fees. The right to file a  
27 petition under this subsection shall be in addition to any other rights to  
28 remove the fiduciary provided by any other statute or regulation or by the  
29 writing creating the fiduciary relationship. If the removal of the fiduciary  
30 is prompted solely as a result of the contracting agreement, any reasonable  
31 cost associated with such removal and transfer shall be paid by the  
32 originating trustee or financial institution entering into the agreement.

33 Sec. 5. K.S.A. 9-535, 9-806, 9-1721 and 9-2107 are hereby repealed.

34 Sec. 6. This act shall take effect and be in force from and after its  
35 publication in the ~~statute book~~ ***Kansas register***.