

As Amended by House Committee

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 129

By Committee on Financial Institutions and Insurance

2-5

AN ACT concerning the state bank commissioner; pertaining to fees; pertaining to costs of certain hearings; amending K.S.A. 9-804 and K.S.A. 2012 Supp. 9-1111, 9-1135, 9-1402, 9-1804, 9-2107, 9-2108 and 9-2111 and repealing the existing sections.

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

Section 1. K.S.A. 9-804 is hereby amended to read as follows:

9-804. When the capital of any bank or trust company shall have been paid in, the president or cashier shall transmit to the commissioner a verified statement showing the names and addresses of all stockholders, the amount of stock each subscribed, and the amount paid in by each. The commissioner shall examine such bank or trust company and shall charge the statutory examination fee and shall examine especially as to the amount of money paid in for capital, surplus and undivided profits, by whom paid, and the amount of capital stock owned in good faith by each stockholder, and generally whether such bank or trust company has complied with the provisions of law. If the commissioner finds from such examination that the bank or trust company has been organized as provided by law, has complied with the provisions of law and has secured the preliminary approval of the commissioner as authorized by subsection (b) of K.S.A. 9-1801, and amendments thereto, or the approval of the board, the commissioner shall issue a certificate showing that such bank or trust company has been organized and its capital paid in as required by law, and that it is authorized to transact a general banking or trust business as provided by law. [A] The bank commissioner may charge a fee for a letter of good standing. The amount of such fee shall be established by rules and regulations adopted by the bank commissioner. <A]

Sec. 2. K.S.A. 2012 Supp. 9-1111 is hereby amended to read as follows:

9-1111. The general business of every bank shall be transacted at the place of business specified in its certificate of authority and at one or more branch banks established and operated as provided in this section. Except for the establishment or operation of a trust branch bank or the relocation of an existing trust branch bank pursuant to K.S.A. 9-1135, and amendments thereto, it shall be unlawful for any bank to establish and operate any branch bank or relocate an existing branch bank except as hereinafter provided. Notwithstanding the provisions of this section, any location at which a depository institution, as defined by K.S.A. 9-701, and amendments thereto, receives deposits, renews time deposits, closes loans, services loans or receives payments on loans or other obligations, as agent, for a bank pursuant to subsection (25) of K.S.A. 9-1101, and amendments thereto, or other applicable state or federal law, or is authorized to open accounts or receive

deposits under subsection (28) of K.S.A. 9-1101, and amendments thereto, shall not be deemed to be a branch bank:

(a) For the purposes of this section, the term "branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, at which deposits are received, checks paid, money lent or trust authority exercised, if approval has been granted by the state bank commissioner, under K.S.A. 9-1602, and amendments thereto;

(b) establishment of a new branch or relocation of an existing branch for eligible banks:

(1) After first applying for and obtaining the approval of the commissioner, an eligible bank incorporated under the laws of this state, may establish and operate one or more branch banks or relocate an existing branch bank, anywhere within this state;

(2) the application shall include the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it, the personnel and office facilities to be provided at the proposed branch bank and other information the commissioner may require;

(3) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed branch bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(4) the application shall include proof of publication of notice that the applicant bank intends to file or has filed an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(5) upon receipt of the application, and following expiration of the comment period, the commissioner may hold a hearing in the county in which the applicant bank seeks to operate the branch bank. [A> The applicant shall be responsible for paying the actual costs associated with the public hearing. <A] The applicant shall publish notice of the time, date and place of such hearing in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank, not less than 10 nor more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner, or the commissioner's designee, in support of or in opposition to the branch bank. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner;

(6) if the commissioner determines a public hearing is not warranted, the commissioner shall approve or disapprove the application within 15 days after receipt of a complete application but not prior to the end of the comment period. If a public hearing is held, the commissioner shall approve or disapprove the application within 60 days after consideration of the complete application and the evidence gathered during the commissioner's investigation. The period for consideration of the application may be extended if the commissioner determines the application presents a significant supervisory concern. If the commissioner finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the new branch or relocation shall be granted, otherwise, it shall be denied;

(7) within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. Any decision of the state banking board is subject to review in accordance with the Kansas judicial review act;

(c) establishment of a new branch or relocation of an existing branch for banks which do not meet the definition of "eligible bank":

(1) After first applying for and obtaining the approval of the state banking board, a bank incorporated under the laws of this state, which does not meet the definition of "eligible bank," may establish and operate one or more branch banks, or relocate an existing branch bank, anywhere within this state;

(2) an application under paragraph (1) of this subsection, to establish and operate a branch bank or to relocate an existing branch bank shall be in such form and contain such information as the rules and regulations of the state bank commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, shall provide;

(3) the application shall include estimates of the annual income and expenses of the proposed branch bank, the annual volume of business to be transacted by it, the nature of the banking business to be conducted at the proposed branch bank, the primary geographical area to be served by it and the personnel and office facilities to be provided at the proposed branch bank;

(4) the application shall include the name selected for the proposed branch bank. The name selected for the proposed branch bank shall not be the name of any other bank or branch bank doing business within a 15 mile radius of the same city or town, nor shall the name selected be required to contain the name of the applicant bank. If the name selected for the proposed bank does not contain the name of the applicant bank, the branch bank shall provide in the public lobby of such branch bank, a public notice that it is a branch bank of the applicant bank;

(5) the application shall include proof of publication of notice that

applicant bank intends to file an application to establish a branch bank or relocate an existing branch bank. The notice shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank. The notice shall be in the form prescribed by the state banking board and at a minimum shall contain the name and address of the applicant bank, the location of the proposed branch and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 days after the date of the second publication;

(6) upon receipt of an application meeting the above requirements, and following the expiration of the comment period, within 60 days the state banking board may hold a hearing in the county in which the applicant bank seeks to establish and operate a branch bank. [A> The applicant shall be responsible for paying the actual costs associated with the public hearing. <A] Notice of the time, date and place of such hearing if one is to be held shall be published in a newspaper of general circulation in the county where the applicant bank proposes to locate the branch bank not less than 10 or more than 30 days prior to the date of the hearing, and proof of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the board in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner and copies shall be furnished to the members of the state banking board not less than 10 days prior to the meeting of the board at which the application will be considered;

(7) the state banking board shall approve or disapprove the application within 90 days after consideration of the application and the evidence gathered during the board's investigation. If the board finds that:

(A) There is a reasonable probability of usefulness and success of the proposed branch bank; and

(B) the applicant bank's financial history and condition is sound, the application shall be granted, otherwise, the application shall be denied;

(8) any final action of the board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act upon the petition of the applicant or any adversely affected or aggrieved person who provided written comments during the specified comment period;

(d) any branch bank lawfully established and operating on the effective date of this act may continue to be operated by the bank then operating the branch bank and by any successor bank;

(e) branch banks which have been established and are being maintained by a bank at the time of its merger into or consolidation with another bank or at the time its assets are purchased and its liabilities are assumed by another bank may continue to be operated by the surviving, resulting or purchasing and assuming bank. The surviving, resulting or purchasing and assuming bank, with approval of the state bank commissioner, may establish and operate a branch bank or banks at the site or sites of the merged, constituent or liquidated bank or banks;

(f) any state bank or national banking association may provide and engage in banking transactions by means of remote service units wherever located,

which remote service units shall not be considered to be branch banks. Any banking transaction effected by use of a remote service unit shall be deemed to be transacted at a bank and not at a remote service unit;

(g) as a condition to the operation and use of any remote service unit in this state, a state bank or national banking association, each hereinafter referred to as a bank, which desires to operate or enable its customers to utilize a remote service unit must agree that such remote service unit will be available for use by customers of any other bank or banks upon the request of such bank or banks to share its use and the agreement of such bank or banks to share all costs, including a reasonable return on capital expenditures incurred in connection with its development, installation and operation. The owner of the remote service unit, whether a bank or any other person, shall make the remote service unit available for use by other banks and their customers on a nondiscriminatory basis, conditioned upon payment of a reasonable proportion of all costs, including a reasonable return on capital expenditures incurred in connection with the development, installation and operation of the remote service unit. Notwithstanding the foregoing provisions of this subsection, a remote service unit located on the property owned or leased by the bank where the principal place of business of a bank, or an attached auxiliary teller facility or branch bank of a bank, is located need not be made available for use by any other bank or banks or customers of any other bank or banks;

(h) for purposes of this section, "remote service unit" means an electronic information processing device, including associated equipment, structures and systems, through or by means of which information relating to financial services rendered to the public is stored and transmitted, whether instantaneously or otherwise, to a bank and which, for activation and account access, is dependent upon the use of a machine-readable instrument in the possession and control of the holder of an account with a bank. The term shall include "online" computer terminals and "offline" automated cash dispensing machines and automated teller machines, but shall not include computer terminals or automated teller machines or automated cash dispensing machines using systems in which account numbers are not machine read and verified. Withdrawals by means of "offline" systems shall not exceed \$300 per transaction and shall be restricted to individual not corporate or commercial accounts;

(i) for purposes of this section, "eligible bank" means a state bank that meets the following criteria:

(1) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(2) meets the following three criteria for a well capitalized bank:

(A) Has a total risk based capital ratio of 10% or greater;

(B) has a tier one risk based capital ratio of 6% or greater; and

(C) has a leverage ratio of 5% or greater; and

(3) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner.

Sec. 3. K.S.A. 2012 Supp. 9-1135 is hereby amended to read as follows:

9-1135. (a) Notwithstanding the requirements contained in K.S.A. 9-1111, and amendments thereto, a bank incorporated under the laws of this state may establish or operate a trust branch bank anywhere in this state.

(b) As used in this section, the term "trust branch bank" means any office, agency or other place of business located within this state, other than the place of business specified in the bank's certificate of authority, the sole purpose of which is to exercise those trust powers granted to the bank by the commissioner pursuant to K.S.A. 9-1602, and amendments thereto. No trust branch bank established or operated pursuant to this section shall be authorized to receive deposits, pay checks or lend money without first applying for and obtaining approval as provided in K.S.A. 9-1111, and amendments thereto.

(c) No bank shall establish or operate a trust branch bank or relocate an existing trust branch bank until the bank has applied for and obtained approval from the commissioner as provided by this section.

(d) An application to establish a trust branch bank as provided in this section shall be in such form and contain such information as is required by the commissioner and shall include certified copies of the following documents:

(1) The written action taken by the board of directors of the bank approving the proposed trust branch bank or the relocation of an existing trust branch bank;

(2) all other required regulatory approvals; and

(3) an affidavit of publication of notice of intent to file an application to establish or operate a trust branch bank or relocate an existing trust branch bank. The publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the proposed trust branch bank is to be located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant, the location of the proposed trust branch bank, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed trust branch bank. All comments and requests for public hearing shall be filed with the commissioner on or before the 30<sup>th</sup> day after the date the application is filed.

(e) A bank making application to the commissioner for approval of a trust branch bank pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The moneys in each such account shall be used to pay the expenses of the commissioner or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to

the bank commissioner fee fund.

(f) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the proposed trust branch bank;

(2) the applicant bank's financial history and condition including the character, qualifications and experience of the officers employed by the bank; and

(3) whether the proposed trust branch bank can be established without undue injury to properly conducted existing banks, national banking associations and trust companies.

If the commissioner determines any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, the application shall be approved.

(g) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days after the date upon which the application was filed.

(h) If a written request for public hearing is filed, the commissioner shall hold a public hearing in a location determined by the commissioner within 30 days of the close of the comment period. [A] The applicant shall be responsible for paying the actual costs associated with the public hearing. [A] Notice of the time, date and place of such hearing shall be published, by the applicant, in a newspaper of general circulation in the county where the proposed trust branch bank is to be located, not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(i) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period provided in this section, shall give written notice to the applicant of the commissioner's intent to extend the period. Such notice shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(j) Within 15 days after the date of the commissioner's approval or disapproval of the application, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The board

shall fix a date for a hearing, which hearing shall be held within 45 days from the date the notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the Kansas judicial review act. Any party which files an appeal of the commissioner's determination to the board shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(k) When the commissioner determines that any bank domiciled in this state has established or is operating a trust branch bank in violation of the laws governing the operation of such bank, the commissioner shall give written notice to the bank of such determination. Within 15 days after receipt of such notification, the bank shall have the right to appeal in writing to the board the commissioner's determination. The board shall fix a date for hearing, which hearing shall be held within 45 days after the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive. If the bank does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the bank is in full compliance with the laws governing the operation of a trust branch bank.

Sec. 4. K.S.A. 2012 Supp. 9-1402 is hereby amended to read as follows:

9-1402. (a) Before any deposit of public moneys or funds shall be made by any municipal corporation or quasi-municipal corporation of the state of Kansas with any bank, savings and loan association or savings bank, such municipal or quasi-municipal corporation shall obtain security for such deposit in one of the following manners prescribed by this section.

(b) Such bank, savings and loan association or savings bank may give to the municipal corporation or quasi-municipal corporation a personal bond in double the amount which may be on deposit at any given time.

(c) Such bank, savings and loan association or savings bank may give a corporate surety bond of some surety corporation authorized to do business in this state, which bond shall be in an amount equal to the public moneys or funds on deposit at any given time less the amount of such public moneys or funds which is insured by the federal deposit insurance corporation or its successor and such bond shall be conditioned that such deposit shall be paid promptly on the order of the municipal corporation or quasi-municipal corporation making such deposits.

(d) Such bank, savings and loan association or savings bank may deposit, maintain, pledge, assign, and grant a security interest in, or cause its agent, trustee, wholly-owned subsidiary or affiliate having identical ownership to deposit, maintain, pledge, assign, and grant a security interest in, for the benefit of the governing body of the municipal corporation or quasi-municipal corporation in the manner provided in this act, securities, security



entitlements, financial assets and securities accounts owned by the depository institution directly or indirectly through its agent or trustee holding securities on its behalf, or owned by the depository institutions wholly-owned subsidiary or by such affiliate, the market value of which is equal to 100% of the total deposits at any given time, and such securities, security entitlements, financial assets and securities accounts, may be accepted or rejected by the governing body of the municipal corporation or quasi-municipal corporation and shall consist of the following and security entitlements thereto:

(1) Direct obligations of, or obligations that are insured as to principal and interest by, the United States of America or any agency thereof and obligations, including but not limited to letters of credit, and securities of United States sponsored corporations which under federal law may be accepted as security for public funds;

(2) bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas which have been refunded in advance of their maturity and are fully secured as to payment of principal and interest thereon by deposit in trust, under escrow agreement with a bank, of direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America;

(3) bonds of the state of Kansas;

(4) general obligation bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas;

(5) revenue bonds of any municipal corporation or quasi-municipal corporation of the state of Kansas if approved by the state bank commissioner in the case of banks and by the savings and loan commissioner in the case of savings and loan associations or federally chartered savings banks;

(6) temporary notes of any municipal corporation or quasi-municipal corporation of the state of Kansas which are general obligations of the municipal or quasi-municipal corporation issuing the same;

(7) warrants of any municipal corporation or quasi-municipal corporation of the state of Kansas the issuance of which is authorized by the state court of tax appeals and which are payable from the proceeds of a mandatory tax levy;

(8) bonds of either a Kansas not-for-profit corporation or of a local housing authority that are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(9) bonds issued pursuant to K.S.A. 12-1740 et seq., and amendments thereto, that are rated at least MIG-1 or Aa by Moody's Investors Service or AA by Standard & Poor's Corp.;

(10) notes of a Kansas not-for-profit corporation that are issued to provide only the interim funds for a mortgage loan that is insured by the federal housing administration;

(11) bonds issued pursuant to K.S.A. 74-8901 through 74-8916, and amendments thereto;

(12) bonds issued pursuant to K.S.A. 68-2319 through 68-2330, and amendments thereto;

(13) commercial paper that does not exceed 270 days to maturity and which has received one of the two highest commercial paper credit ratings by a nationally recognized investment rating firm; or

(14) (A) negotiable promissory notes together with first lien mortgages on one to four family residential real estate located in Kansas securing payment of such notes when such notes or mortgages:

(i) Are underwritten by the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration or the veterans administration standards; or are valued pursuant to rules and regulations which shall be adopted by both the state bank commissioner and the savings and loan commissioner after having first being submitted to and approved by both the state banking board under K.S.A. 9-1713, and amendments thereto, and the savings and loan board. Such rules and regulations shall be published in only one place in the Kansas administrative regulations as directed by the state rules and regulations board;

(ii) have been in existence with the same borrower for at least two years and with no history of any installment being unpaid for 30 days or more; and

(iii) are valued at not to exceed 50% of the lesser of the following three values: Outstanding mortgage balance; current appraised value of the real estate; or discounted present value based upon current federal national mortgage association or government national mortgage association interest rates quoted for conventional, federal housing administration or veterans administration mortgage loans.

(B) Securities under (A) shall be taken at their value for not more than 50% of the security required under the provisions of this section.

(C) Securities under (A) shall be withdrawn immediately from the collateral pool if any installment is unpaid for 30 days or more.

(D) A status report on all such loans shall be provided to the investing governmental entity by the financial institution on a quarterly basis.

(e) No such bank, savings and loan association or savings bank may deposit and maintain for the benefit of the governing body of a municipal or quasi-municipal corporation of the state of Kansas, any securities which consist of:

(1) Bonds secured by revenues of a utility which has been in operation for less than three years; or

(2) bonds issued under K.S.A. 12-1740 et seq., and amendments thereto, unless such bonds have been refunded in advance of their maturity as provided in subsection (d) or such bonds are rated at least Aa by Moody's Investors Service or AA by Standard & Poor's Corp.

(f) [D> Any expense incurred in connection with granting approval of revenue bonds shall be paid by the applicant for approval <D] [A> Any person making an application for the commissioner's approval of a revenue bond shall

pay the commissioner a fee. The amount of such fee shall be established by rules and regulations adopted by the commissioner <A> .

Sec. 5. K.S.A. 2012 Supp. 9-1804 is hereby amended to read as follows:

9-1804. (a) No bank or trust company incorporated under the laws of this state shall change its place of business, from one city or town to another or from one location to another within the same city or town, without prior approval. Any such bank or trust company desiring to change its place of business shall file written application with the office of the state bank commissioner in such form and containing such information as the board and the commissioner shall require. Notice of the proposed relocation shall be published in a newspaper of general circulation in the county where the main bank or trust company is currently located and in the county to which the bank or trust company proposes to relocate. The notice shall be in the form prescribed by the commissioner and at a minimum shall contain the name and address of the applicant bank or trust company, the address of the proposed new location and a solicitation for written comments. The notice shall be published on the same day for two consecutive weeks and provide for a comment period of not less than 10 calendar days after the date of the second publication. The applicant shall provide proof of publication to the commissioner.

(b) If the applicant is an eligible bank or an eligible trust company, the commissioner shall examine and investigate the application. If the commissioner determines:

(1) There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and

(2) the applicant bank's or trust company's financial history and condition is sound, the application shall be approved, otherwise, it shall be denied.

(c) Within 15 days after any final action of the commissioner approving or disapproving an application, the applicant, or any adversely affected or aggrieved person who provided written comments during the specified comment period, may request a hearing with the state banking board. Upon receipt of a timely request, the board shall conduct a hearing in accordance with the provisions of the Kansas administrative procedure act. [A> Any party requesting a public hearing pursuant to this section shall pay the actual expenses associated with such hearing. <A] Any decision of the state banking board is subject to review in accordance with the Kansas judicial review act.

(d) If a bank does not meet the definition of an eligible bank or a trust company does not meet the definition of an eligible trust company, the state banking board shall examine and investigate the application. If the board determines:

(1) There is a reasonable probability of usefulness and success of the bank or trust company in the proposed location; and

(2) the applicant bank's or trust company's financial history and condition is sound, the application shall be approved, otherwise, it shall be denied.

(e) Any final action of the board approving or disapproving an application shall be subject to review in accordance with the Kansas judicial review act upon the petition of the applicant, or any adversely affected or aggrieved

person who provided written comments during the specified comment period.

(f) [D] The expenses of such examination and investigation shall be paid by the bank or trust company which shall deposit with the commissioner a fee in an amount <D] [A] A person making application pursuant to this section shall pay a fee to the commissioner. The amount of such fee shall be <A] established by rules and regulations adopted by the commissioner. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate special account in the state treasury for each application. The moneys in each such account shall be used only to pay the expenses of the examination and investigation to which it relates, and any unused portion of such deposit shall be transferred to the bank commissioner fee fund.

(g) For purposes of this section:

(1) "Eligible bank" means a state bank that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform financial institutions rating system as a result of its most recent federal or state examination;

(B) meets the following three criteria for a well capitalized bank:

(i) Has a total risk based capital ratio of 10% or greater;

(ii) has a tier one risk based capital ratio of 6% or greater; and

(iii) has a leverage ratio of 5% or greater; and

(C) is not subject to a cease and desist order, consent order, prompt corrective action directive, written agreement, memorandum of understanding or other administrative agreement with its primary federal regulator or the office of the state bank commissioner; and

(2) "eligible trust company" means a state chartered trust company that meets the following criteria:

(A) Received a composite rating of 1 or 2 under the uniform interagency trust rating system as a result of its most recent state examination; and

(B) is not subject to a cease and desist order, consent order, written agreement, memorandum of understanding or other administrative agreement with the office of the state bank commissioner.

Sec. 6. K.S.A. 2012 Supp. 9-2107 is hereby amended to read as follows:

9-2107. (a) As used in this section:

(1) "Contracting trustee" means any trust company, as defined in K.S.A. 9-701, and amendments thereto, any bank that has been granted trust authority by the state bank commissioner under K.S.A. 9-1602, and amendments thereto, or any national bank chartered to do business in Kansas that has been granted trust authority by the comptroller of the currency under 12 U.S.C. Section 92a,

or any bank that has been granted trust authority or any trust company, regardless of where such bank or trust company is located, and which is controlled, as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company as any trust company, state bank or national bank chartered to do business in Kansas, which accepts or succeeds to any fiduciary responsibility as provided in this section;

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

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

(b) Any contracting trustee and any originating trustee may enter into an agreement by which the contracting trustee, without any further authorization of any kind, succeeds to and is substituted for the originating trustee as to all fiduciary powers, rights, duties, privileges and liabilities with respect to all accounts for which the originating trustee serves in any fiduciary capacity, except as may be provided otherwise in the agreement. Notwithstanding the provisions of this section, no contracting trustee as defined in K.S.A. 9-2107(a)(1), and amendments thereto, having its home office outside the state of Kansas shall enter into an agreement except with an originating trustee which is commonly controlled as defined in K.S.A. 9-1612, and amendments thereto, by the same bank holding company.

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

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

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

(d) The agreement may authorize the contracting trustee:

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

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

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

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

(1) The agreement;

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

(3) all other required regulatory approvals;

(4) an affidavit of publication of notice of intent to file the application with the commissioner. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city or county where the principal office of the originating trustee or financial institution is located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant contracting trustee, the originating trustee or financial institution, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application, and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed agreement. All comments and requests for public hearing shall be filed with the commissioner on or before the 30<sup>th</sup> day after the date the application is filed; and

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

(g) A contracting trustee making application to the commissioner for approval of any agreement pursuant to this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the

provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The money in each such account shall be used to pay the expenses of the commissioner, or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(h) Upon the filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

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

(2) the financial history and condition of the contracting trustee including the character, qualifications and experience of the officers employed by the contracting trustee; and

(3) whether the contracting agreement will result in any undue injury to properly conducted existing banks, national banks and trust companies.

If the commissioner shall determine any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, then the application shall be approved.

(i) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(j) If a written request for public hearing is filed, the commissioner shall hold within 30 days of the close of the comment period, a public hearing in a location determined by the commissioner. [A> The applicant shall be responsible for paying the actual costs associated with the public hearing. <A] Notice of the time, date and place of such hearing shall be published by the applicant in a newspaper of general circulation in the county where the originating trustee or financial institution is located, not less than 10 nor more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons may present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(k) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period provided for by this section, shall give written notice to each party to the agreement of the commissioner's intent to extend the period which shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(l) Within 15 days of the date of the commissioner's approval or denial,

the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination by filing a notice of appeal with the commissioner. The state banking board shall fix a date for hearing, which hearing shall be held within 45 days after such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Any action of the board pursuant to this section is subject to review in accordance with the Kansas judicial review act. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(m) When the commissioner determines that any contracting trustee domiciled in this state has entered into a contracting agreement in violation of the laws governing the operation of such contracting trustee, the commissioner shall give written notice to the contracting trustee and the originating trustee or financial institution of such determination. Within 15 days after receipt of such notification, the contracting trustee and originating trustee or financial institution shall have the right to appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which shall be held within 45 days after the date of the appeal and shall be conducted in accordance with the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination. The decision of the board shall be final and conclusive. If the contracting trustee does not appeal to the board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the contracting trustee, originating trustee and financial institution are in full compliance with the laws governing the operation of a contracting trustee and originating trustee or financial institution.

(n) Any party entitled to receive a notice under subsection (f)(5) may file a petition in the court having jurisdiction over the fiduciary relationship, or if none, in the district court in the county where the originating trustee has its principal office, seeking to remove any contracting trustee substituted or about to be substituted as fiduciary pursuant to this section. Unless the contracting trustee files a written consent to its removal or a written declination to act subsequent to the filing of the petition, the court, upon notice and hearing, shall determine the best interest of the petitioner and all other parties concerned and shall fashion such relief as it deems appropriate in the circumstances, including the awarding of reasonable attorney fees. The right to file a petition under this subsection shall be in addition to any other rights to remove fiduciary provided by any other statute or regulation or by the writing creating the fiduciary relationship. If the removal of the fiduciary is prompted solely as a result of the contracting agreement, any reasonable cost associated with such removal and transfer, not to exceed \$200 per account, shall be paid by the originating trustee or financial institution entering into the agreement.

Sec. 7. K.S.A. 2012 Supp. 9-2108 is hereby amended to read as follows:



9-2108. It is unlawful for any trust company to establish or operate a trust service office or relocate an existing trust service office except as provided in this act.

(a) As used in this section: "Trust service office" means any office, agency or other place of business located within this state other than the place of business specified in the trust company's certificate of authority, at which the powers granted to trust companies under K.S.A. 9-2103, and amendments thereto, are exercised. For the purposes of this section, any activity in compliance with K.S.A. 9-2107, and amendments thereto, does not constitute a trust service office.

(b) After first applying for and obtaining the approval of the commissioner under this section, one or more trust service offices may be established or operated in any city within this state by a trust company incorporated under the laws of this state.

(c) An application to establish or operate a trust service office or to relocate an existing trust service office shall be in such form and contain such information as required by the commissioner and shall include certified copies of the following documents:

(1) The written action taken by the board of directors of the trust company approving the establishment or operation of the proposed trust service office or the proposed relocation of the trust service office;

(2) all other required regulatory approvals; and

(3) an affidavit of publication of notice of intent to file an application to establish or operate a trust service office or relocate an existing trust service office. Publication of the notice shall be on the same day for two consecutive weeks in the official newspaper of the city where the proposed trust service office is to be located. The notice shall be in the form prescribed by the commissioner and shall contain the name of the applicant, the location of the proposed trust service office, the proposed date of filing of the application with the commissioner, a solicitation for written comments concerning the application and a notice of the public's right to file a written request for a public hearing for the purpose of presenting oral or written evidence regarding the proposed trust service office. All comments and requests for public hearing shall be filed with the commissioner on or before the 30<sup>th</sup> day after the date the application is filed.

(d) A trust company making application to the commissioner for approval of a trust service office under this section shall pay to the commissioner a fee, in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the expenses of the commissioner or designee in the examination and investigation of the application. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The moneys in each such account shall be used to pay the expenses of the commissioner or designee in the examination and investigation of the application to which it relates and any unused balance shall be transferred to the bank commissioner fee fund.

(e) Upon filing of any such application with the commissioner, the commissioner shall make or cause to be made, a careful examination and investigation concerning:

(1) The reasonable probability of usefulness and success of the proposed trust service office;

(2) the applicant trust company's financial history and condition including the character, qualifications and experience of the officers employed by the trust company; and

(3) whether the proposed trust service office can be established without undue injury to properly conducted existing banks, national banking associations and trust companies. If the commissioner determines any of such matters unfavorably to the applicants, the application shall be disapproved, but if not, the application shall be approved.

(f) If no written request for public hearing is filed, the commissioner shall render approval or disapproval of the application within 60 days of the date upon which the application was filed.

(g) If a written request for public hearing is filed, the commissioner shall hold a public hearing in a location determined by the commissioner within 30 days of the close of the comment period. [A] The applicant shall be responsible for paying the actual costs associated with the public hearing. [A] Notice of the time, date and place of the hearing shall be published by the applicant in a newspaper of general circulation in the county where the proposed trust service office is to be located, not less than 10 or more than 30 days prior to the date of the hearing, and an affidavit of publication shall be filed with the commissioner. At any such hearing, all interested persons shall be allowed to present written and oral evidence to the commissioner in support of or in opposition to the application. Upon completion of a transcript of the testimony given at any such hearing, the transcript shall be filed in the office of the commissioner. Within 14 days after the public hearing, the commissioner shall approve or disapprove the application after consideration of the application and evidence gathered during the commissioner's investigation.

(h) The commissioner may extend the period for approval or disapproval if the commissioner determines that any information required by this section has not been furnished, any material information submitted is inaccurate or additional investigation is required. The commissioner, prior to expiration of the application period as provided in this section, shall give written notice to the applicant of the commissioner's intent to extend the period and such notice shall include a specific date for expiration of the extension period. If any information remains incomplete or inaccurate upon the expiration of the extension period the application shall be disapproved.

(i) Within 15 days of the date after the commissioner's approval or disapproval of the application, the applicant or any individual or corporation who filed a request for and presented evidence at the public hearing shall have the right to appeal in writing to the state banking board the commissioner's determination, by filing a notice of appeal with the commissioner. The state banking board shall fix a date for a hearing, which hearing shall be held within 45 days from the date such notice of appeal is filed. The board shall conduct the hearing in accordance with the provisions of the Kansas administrative procedure act and render its decision affirming or rescinding the determination of the commissioner. Action of the board pursuant to this

section is subject to review in accordance with the Kansas judicial review act. Any party which files an appeal to the state banking board of the commissioner's determination shall pay to the commissioner a fee in an amount established by rules and regulations of the commissioner, adopted pursuant to K.S.A. 9-1713, and amendments thereto, to defray the board's expenses associated with the conduct of the appeal.

(j) When the commissioner determines that a trust company domiciled in this state has established or is operating a trust service office in violation of the laws governing the operation of such trust company, the commissioner shall give written notice to the trust company of such determination. Within 15 days after receipt of such notification, the trust company may appeal in writing to the state banking board the commissioner's determination. The board shall fix a date for hearing, which hearing shall be held within 45 days from the date of such appeal and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. At such hearing the board shall hear all matters relevant to the commissioner's determination and shall approve or disapprove the commissioner's determination, and the decision of the board shall be final and conclusive. If the trust company does not appeal to the state banking board from the commissioner's determination or if an appeal is made and the commissioner's determination is upheld by the board, the commissioner may proceed as provided in K.S.A. 9-1714, and amendments thereto, until such time as the commissioner determines the trust company is in full compliance with the laws governing the operation of a trust service office.

Sec. 8. K.S.A. 2012 Supp. 9-2111 is hereby amended to read as follows:

9-2111. (a) Except as provided in K.S.A. 9-2107, and amendments thereto, no trust company, trust department of a bank, corporation or other business entity, the home office of which is located outside the state of Kansas, shall establish or operate a trust facility within the state of Kansas, unless the laws of the state where the home office of the nonresident trust company, trust department of a bank, corporation or other business entity is located, reciprocally authorize a Kansas chartered trust company, trust department of a bank, corporation or other business entity to establish or operate a trust facility within that state.

(b) Before any nonresident trust company, trust department of a bank, corporation or other business entity establishes a trust facility in Kansas, a copy of the application submitted to the home state, and proof that the home state has reciprocity with Kansas, must be filed by the applicant with the commissioner.

(c) No Kansas trust company shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-2108, and amendments thereto.

(d) No Kansas bank with a trust department shall establish an out-of-state trust facility until an application has been filed with the commissioner and approval has been received. An application filed pursuant to this section shall be subject to the provisions in K.S.A. 9-1135, and amendments thereto.

(e) [A] A Kansas trust company or Kansas bank making application to the commissioner for approval to establish a trust facility pursuant to subsection (c) or (d) shall pay to the commissioner a fee. The amount of such fee shall be established by rules and regulations of the commissioner adopted pursuant to

K.S.A. 9-1713, and amendments thereto. The commissioner shall remit all amounts received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of a separate account in the state treasury for each application. The money in each such account shall be used to pay the expenses of the commissioner, or commissioner's designee in the examination and investigation of the application to which it relates <A> [D] and any unused balance shall be transferred to the bank commissioner fee fund <D> [A] . <A>

[A] (f) <A> As used in this section, "trust facility" means any office, agency, desk or other place of business, at which trust business is conducted.

[A] New Sec. 9. (a) Except as provided in subsection (b), at the time of filing any application described below, the applicant shall remit to the office of the state bank commissioner a nonrefundable fee in the amount of: <A>

[A] (1) Bank or trust company charter.....\$2,500 <A>

[A] (2) New branch bank: <A>

[A] (A) Ineligible bank.....1,000 <A>

[A] (B) Eligible bank.....500 <A>

[A] (3) Relocation of a branch bank or main office: <A>

[A] (A) Ineligible bank.....1,000 <A>

[A] (B) Eligible bank.....500 <A>

[A] (4) Merger, consolidation, or transfer of assets and liabilities.....1,000 <A>

[A] (5) Change of control: <A>

[A] (A) General.....1,000 <A>

[A] (B) Bona fide gift or inheritance.....500 <A>

[A] (C) Formation of one-bank holding company and associated exchange of stock.....500 <A>

[A] (6) Conversion to state charter.....no fee <A>

[A] (7) Bank service corporation.....no fee <A>

[A] (8) Fiduciary activities: <A>

[A] (A) Fiduciary powers.....no fee <A>

[A] (B) Trust branch.....500 <A>

[A] (C) Trust service office.....500 <A>

[A] (D) Contracting trustee agreement.....500 <A>

[A> (E) Out of state trust facility.....500 <A]

[A> (9) Change of name.....no fee <A]

[A> (10) Revenue bond pledgibility.....200 <A]

[A> (11) Letter of good standing.....50 <A]

[A> (12) Administrative appeals.....1,000 <A]

[A> (b) The commissioner may adopt rules and regulations to change the amount of the fees, either increasing or decreasing such fees, as established in subsection (a) to an amount not to exceed 150% of any such fee established in subsection (a). <A]

[A> (c) Any applicant may be required by the commissioner to pay any additional cost associated with any examination or investigation if the state bank commissioner determines that an on-site examination of the financial institutions or trust companies that are parties to the application is necessary. <A]

[A> (d) The commissioner may adopt rules and regulations necessary to administer the provisions of this section. <A]

Sec. [D> 9. <D] [A> 10. <A] K.S.A. 9-804 and K.S.A. 2012 Supp. 9-1111, 9-1135, 9-1402, 9-1804, 9-2107, 9-2108 and 9-2111 are hereby repealed.

Sec. [D> 10. <D] [A> 11. <A] This act shall take effect and be in force from and after its publication in the statute book.