

9-2108. Trust service office; establishment or relocation; application. 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 30th 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. 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.

History: L. 1993, ch. 81, § 1; L. 1994, ch. 51, § 2; L. 2001, ch. 5, § 49; L. 2010, ch. 17, § 32; July 1.