

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1098
98TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, April 15, 2015, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

2438S.02C

ADRIANE D. CROUSE, Secretary.

AN ACT

To repeal section 362.600, RSMo, and to enact in lieu thereof one new section relating to trust companies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 362.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 362.600, to read as follows:

362.600. 1. The term "out-of-state bank or trust company", as used in this section, shall mean:

(1) Any bank or trust company now or hereafter organized under the laws of any state of the United States other than Missouri; and

(2) Any national banking association or any thrift institution under the jurisdiction of the office of [thrift supervision] **the comptroller of the currency** having its principal place of business in any state of the United States other than Missouri.

2. Except as provided in [subsection] **subsections 4 and 6** of this section, any out-of-state bank or trust company may act in this state as trustee, executor, administrator, guardian, or in any other like fiduciary capacity, without the necessity of complying with any law of this state relating to the licensing of foreign banking corporations by the director of finance or relating to the qualifications of foreign corporations to do business in this state, and notwithstanding any prohibition, limitation or restriction contained in any other law of this state, provided only that:

(1) The out-of-state bank or trust company is authorized to act in this fiduciary capacity or capacities in the state in which it is incorporated, or, if the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 out-of-state bank or trust company be a national banking association, or a thrift
20 institution, it is authorized to act in this fiduciary capacity or capacities in the
21 state in which it has its principal place of business; and

22 (2) Any bank or other corporation organized under the laws of this state
23 or a national banking association or thrift institution having its principal place
24 of business in this state may act in these fiduciary capacities in that state
25 without further showing or qualification, other than that it is authorized to act
26 in these fiduciary capacities in this state, compliance with minimum capital,
27 bonding, or securities pledge requirements applicable to all banks and trust
28 companies doing business in that state, and compliance with any law of that state
29 concerning service of process:

30 (a) Which may require the appointment of an official or other person for
31 the receipt of process; or

32 (b) Which contains provisions to the effect that any bank or trust company
33 which is not incorporated under the laws of that state, or if a national bank or
34 thrift institution then which does not have its principal place of business in that
35 state, acting in that state in a fiduciary capacity pursuant to provisions of law
36 making it eligible to do so, shall be deemed to have appointed an official of that
37 state to be its true and lawful attorney upon whom may be served all legal
38 process in any action or proceeding against it relating to or growing out of any
39 trust, estate or matter in respect of which the entity has acted or is acting in that
40 state in this fiduciary capacity, and that the acceptance of or engagement in that
41 state in any acts in this fiduciary capacity shall be deemed its agreement that the
42 process against it, which is so served, shall be of the same legal force and validity
43 as though served upon it personally, or which contains any substantially similar
44 provisions.

45 3. Any out-of-state bank or trust company eligible to act in any fiduciary
46 capacity in this state pursuant to the provisions of this section may so act
47 whether or not a resident of this state be acting with it in this capacity, may use
48 its corporate name in connection with such activity in this state, and may be
49 appointed to act in this fiduciary capacity by any court having jurisdiction in the
50 premises, all notwithstanding any provision of law to the contrary. Nothing in
51 this section contained shall be construed to prohibit or make unlawful any
52 activity in this state by a bank or trust company which is not incorporated under
53 the laws of this state, or if a national bank or thrift institution then which does
54 not have its principal place of business in this state, which would be lawful in the

55 absence of this section.

56 4. Except as provided in subsection 6 of this section, prior to the time
57 when any out-of-state bank or trust company acts pursuant to the authority of
58 this section in any fiduciary capacity or capacities in this state, the out-of-state
59 bank or trust company shall file with the director of finance a written application
60 for a certificate of reciprocity and the director of finance shall issue the certificate
61 to the out-of-state bank or trust company. The application shall state **the**
62 **information set forth in the following subdivisions (1) to (7), and the**
63 **out-of-state bank or trust company shall be subject to the following**
64 **subdivisions (8) to (10):**

65 (1) The correct corporate name of the out-of-state bank or trust company;

66 (2) The name of the state under the laws of which it is incorporated, or
67 if the out-of-state bank or trust company is a national banking association or
68 thrift institution shall state that fact;

69 (3) The address of its principal business office;

70 (4) In what fiduciary capacity or capacities it desires to act, in the state
71 of Missouri;

72 (5) **Whether the out-of-state bank or trust company intends to**
73 **establish a trust representative office, facility, branch, or other**
74 **physical location in the state of Missouri and the activities to be**
75 **conducted at such office, facility, branch, or location;**

76 (6) That it is authorized to act in a similar fiduciary capacity or capacities
77 in the state in which it is incorporated, or, if it is a national banking association,
78 in which it has its principal place of business;

79 [(6)] (7) That the application shall constitute the irrevocable appointment
80 of the director of finance of Missouri as its true and lawful attorney to receive
81 service of all legal process in any action or proceeding against it relating to or
82 growing out of any trust, estate or matter in respect of which the out-of-state
83 bank or trust company may act in this state in the fiduciary capacity pursuant
84 to the certificate of reciprocity applied for;

85 [(7)] (8) **Subject to subdivision (10) of this subsection** unless the
86 out-of-state bank or trust company verifies to the director of the division of
87 finance that it satisfies capital requirements equal to the new charter
88 requirement for a Missouri trust company or that it maintains a bond for the
89 faithful performance of all its fiduciary activities equivalent to the Missouri
90 capital requirements, the director may require the applicant to submit a bond

91 issued by a surety company authorized to do business in the state of Missouri in
92 the minimum amount of one million dollars in a form or such greater amount
93 acceptable to the director of the division of finance. The surety bond shall secure
94 the faithful performance of the fiduciary obligations of the out-of-state bank or
95 trust company in Missouri.

96 **(9)** The application shall be verified by an officer of the out-of-state bank
97 or trust company, and there shall be filed with it such certificates of public
98 officials and copies of documents certified by public officials as may be necessary
99 to show that the out-of-state bank or trust company is authorized to act in a
100 fiduciary capacity or capacities similar to those in which it desires to act in the
101 state of Missouri, in the state in which it is incorporated, or, if it is a national
102 banking association in which it has its principal place of business. The director
103 of finance shall, thereupon, if the out-of-state bank or trust company is one which
104 may act in the fiduciary capacity or capacities as provided in subsection 2 of this
105 section, issue to the entity a certificate of reciprocity, retaining a duplicate
106 thereof together with the application and accompanying documents in his or her
107 office. The certificate of reciprocity shall recite and certify that the out-of-state
108 bank or trust company is eligible to act in this state pursuant to this section and
109 shall recite the fiduciary capacity or capacities in which the out-of-state bank or
110 trust company is eligible so to act.

111 **(10) Notwithstanding subdivision (8) of this subsection, to**
112 **facilitate interstate reciprocity under this section, the director may**
113 **enter a memorandum of understanding with the bank or trust company**
114 **regulator of another jurisdiction to accept the capital requirements of**
115 **that jurisdiction in lieu of the Missouri minimum capital or bond**
116 **requirements set forth in subdivision (8) of this subsection and**
117 **establish such other terms to assure reciprocal interstate treatment for**
118 **Missouri chartered bank or trust companies in that jurisdiction.**

119 5. A certificate of reciprocity issued to any out-of-state bank or trust
120 company shall remain in effect until the out-of-state bank or trust company shall
121 cease to be entitled under subsection 2 of this section to act in this state in the
122 fiduciary capacity or capacities covered by the certificate, and thereafter until
123 revoked by the director of finance. If at any time the out-of-state bank or trust
124 company shall cease to be entitled under subsection 2 of this section to act in this
125 state in the fiduciary capacity or capacities covered by the certificate, the director
126 of finance shall revoke the certificate and give written notice of the revocation to

127 the out-of-state bank or trust company. No revocation of any certificate of
128 reciprocity shall affect the right of the out-of-state bank or trust company to
129 continue to act in this state in a fiduciary capacity in estates or matters in which
130 it has theretofore begun to act in a fiduciary capacity pursuant to the certificate.

131 6. An out-of-state bank or trust company shall not establish or maintain
132 [in this state a place of business, branch office or agency for the conduct] **a trust**
133 **representative office, facility, branch, or other physical location** in this
134 state [of] **for the conduct of** business as a fiduciary unless:

135 (1) The out-of-state bank or trust company is under the control of a
136 Missouri bank or a Missouri bank holding company, as these terms are defined
137 in section 362.925, and the out-of-state bank or trust company has complied with
138 the requirements relating to the qualifications of out-of-state bank or trust
139 company to do business in this state;

140 (2) The out-of-state bank or trust company is a bank, trust company or
141 national banking association in good standing that possesses fiduciary powers
142 from its chartering authority and is the surviving corporation to a merger or
143 consolidation with a national banking association located in Missouri or a
144 Missouri bank or trust company **or is otherwise authorized by federal law**
145 **to establish a branch in Missouri.** The provisions of this subdivision are
146 enacted to implement subsection 2 of this section and section 362.610, and the
147 provisions of Title 12, U.S.C. 36[(f)(2)] of the National Bank Act **and other**
148 **applicable federal law;** or

149 (3) The out-of-state bank or trust company is a state-chartered bank,
150 savings and loan association, trust company, national banking association, or
151 thrift institution in good standing that possesses fiduciary powers and has
152 received a certificate of reciprocity, in which case it may [only] open a trust
153 representative office, **facility, branch, or other physical location** in Missouri
154 [which is not otherwise a branch of such out-of-state bank or trust company],
155 provided a bank, savings and loan association or trust company chartered under
156 the laws of Missouri and a national bank or thrift institution with its principal
157 location in Missouri, all with fiduciary powers, are permitted to open and operate
158 **such** a trust representative office, **facility, branch, or other physical**
159 **location** under the same or less restrictive conditions in the state in which the
160 out-of-state bank or trust company is organized or has its principal office.

161 7. An out-of-state bank or trust company, insofar as it acts in a fiduciary
162 capacity in this state pursuant to the provisions of this section, shall not be

163 deemed to be transacting business in this state, if the out-of-state bank or trust
164 company does not establish or maintain in this state a place of business, branch
165 office, or agency for the conduct in this state of business as a fiduciary.

166 8. Every out-of-state bank or trust company to which a certificate of
167 reciprocity shall have been issued shall be deemed to have appointed the director
168 of finance to be its true and lawful attorney upon whom may be served all legal
169 process in any action or proceeding against it relating to or growing out of any
170 trust, estate or matter in respect of which the out-of-state bank or trust company
171 acts in this state in any fiduciary capacity pursuant to the certificate of
172 reciprocity. Service of the process shall be made by delivering a copy of the
173 summons or other process, with a copy of the petition when service of the copy is
174 required by law, to the director of finance or to any person in his or her office
175 authorized by him to receive the service. The director of finance shall
176 immediately forward the process, together with the copy of the petition, if any,
177 to the out-of-state bank or trust company, by registered mail, addressed to it at
178 the address on file with the director, or if there be none on file then at its last
179 known address. The director of finance shall keep a permanent record in his or
180 her office showing for all **such** process served, the style of the action or
181 proceeding, the court in which it was brought, the name and title of the officer
182 serving the process, the day and hour of service, and the day of mailing by
183 registered mail to the out-of-state bank or trust company and the address to
184 which mailed. In case the process is issued by a court, the same may be directed
185 to and served by any officer authorized to serve process in the city or county
186 where the director of finance shall have his or her office, at least fifteen days
187 before the return thereof. **If an out-of-state bank or trust company has**
188 **established a trust representative office, trust facility, branch, or other**
189 **physical location in the state of Missouri, that bank or trust company**
190 **may also be served legal process at any such location by service upon**
191 **any officer, agent, or employee at that location.**

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