

FIRST REGULAR SESSION

SENATE BILL NO. 430

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time February 15, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1838S.01I

AN ACT

To amend chapter 362, RSMo, by adding thereto twenty-two new sections relating to family trust companies, with penalty provisions.

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

Section A. Chapter 362, RSMo, is amended by adding thereto twenty-two
2 new sections, to be known as sections 362.1010, 362.1015, 362.1020, 362.1030,
3 362.1035, 362.1037, 362.1040, 362.1045, 362.1050, 362.1055, 362.1060, 362.1065,
4 362.1070, 362.1075, 362.1080, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105,
5 362.1110, and 362.1115, to read as follows:

**362.1010. Sections 362.1010 to 362.1115 shall be known and may
2 be cited as the "Missouri Family Trust Company Act".**

**362.1015. For purposes of sections 362.1010 to 362.1115, the
2 following terms mean:**

3 **(1) "Authorized representative", if a family trust company is**
4 **organized as a corporation, then an officer or director of the family**
5 **trust company or, if a family trust company is organized as a limited**
6 **liability company, then a manager, officer, or member of the family**
7 **trust company;**

8 **(2) "Collateral kinship", a relationship that is not lineal but stems**
9 **from a common ancestor;**

10 **(3) "Controlling stockholder or member", an individual who owns**
11 **or has the ability or power to directly or indirectly vote ten percent or**
12 **more of the outstanding shares, membership interest, or membership**
13 **units of the family trust company;**

14 **(4) "Designated relative", a common ancestor of a family, either**
15 **living or deceased, who is so designated in an organizational**
16 **instrument. No family trust company shall have more than one**

17 **designated relative;**

18 **(5) "Engage in trust company business with the general public",**
19 **any sales, solicitations, arrangements, agreements, or transactions to**
20 **provide trust or other business services, whether for a fee, commission,**
21 **or any other type of remuneration, with any person who is not a family**
22 **member or any sole proprietorship, partnership, limited liability**
23 **company, joint venture, association, corporation, trust, estate, business**
24 **trust, or other company that is not one hundred percent owned by one**
25 **or more family members;**

26 **(6) "Family affiliate", a company or other entity wholly and**
27 **exclusively owned by, directly or indirectly, and operated for the sole**
28 **benefit of:**

29 **(a) One or more family members; or**

30 **(b) Charitable foundations, charitable trusts, or other charitable**
31 **entities if such foundation, trust, or entity is funded exclusively by one**
32 **or more family members;**

33 **(7) "Family member":**

34 **(a) A designated relative;**

35 **(b) Any person within the tenth degree of lineal kinship of a**
36 **designated relative;**

37 **(c) Any person within the ninth degree of collateral kinship to**
38 **a designated relative;**

39 **(d) The spouse of any person who qualifies under paragraphs (a)**
40 **through (c) of this subdivision;**

41 **(e) Any former spouse of any person who qualifies under**
42 **paragraphs (a) through (c) of this subdivision;**

43 **(f) The probate estate of any person who qualified as a family**
44 **member under paragraphs (a) through (e) of this subdivision;**

45 **(g) A family affiliate;**

46 **(h) An irrevocable trust funded exclusively by one or more**
47 **family members of which all permissible distributees, as defined under**
48 **subdivision (15) of section 456.1-103, qualify under paragraphs (a)**
49 **through (g) of this subdivision or are charitable foundations, charitable**
50 **trusts, or other charitable entities; or**

51 **(i) A revocable trust of which one or more family members are**
52 **the sole settlors.**

53 **For purposes of this subdivision, a legally adopted person shall be**

54 treated as a natural child of the adoptive parents; a stepchild shall be
55 treated as a natural child of the family member who is or was the
56 stepparent of that child; and a foster child or an individual who was a
57 minor when a family member became his or her legal guardian shall be
58 treated as a natural child of the family member appointed as foster
59 parent or guardian. Degrees of kinship are calculated by adding the
60 number of steps from the designated relative through each person to
61 the family member either directly in case of lineal kinship or through
62 the common ancestor in the case of collateral kinship;

63 (8) "Family trust company", a corporation or limited liability
64 company organized or qualified to do business in this state that is
65 wholly owned and exclusively controlled by, directly or indirectly, one
66 or more family members, excluding any former spouse of a family
67 member; that operates for the exclusive benefit of a family member
68 regardless of whether compensation is received or anticipated; and that
69 does not engage in trust company business with the general public or
70 otherwise hold itself out as a trustee for hire by advertisement,
71 solicitation, or other means. The term "family trust company" shall
72 include foreign family trust companies unless context indicates
73 otherwise;

74 (9) "Family trust company affiliated party":

75 (a) A director, officer, manager, employee, or controlling
76 stockholder or member of a family trust company; or

77 (b) A stockholder, member, or any other person as determined by
78 the secretary who participates in the affairs of a family trust company;

79 (10) "Foreign family trust company", a family trust company that:

80 (a) Is licensed by the District of Columbia or a state in the
81 United States other than this state;

82 (b) Has its principal place of business in the District of Columbia
83 or a state in the United States other than this state;

84 (c) Is operated in accordance with family or private trust
85 company laws of the District of Columbia or of the state in which it is
86 licensed;

87 (d) Is subject to statutory or regulatory mandated oversight by
88 the District of Columbia or state in which the principal place of
89 business is located; and

90 (e) Is not owned by or a subsidiary of a corporation, limited

91 liability company, or other business entity that is organized in or
92 licensed by any foreign country;

93 (11) "Lineal kinship", a relationship in the direct line of ascent
94 or descent from a designated relative;

95 (12) "Officer", an individual, regardless of whether the individual
96 has an official title or receives a salary or other compensation, who
97 may participate in the major policy making functions of a family trust
98 company other than as a director. The term shall not include an
99 individual who may have an official title and exercises discretion in the
100 performance of duties and functions but who does not participate in
101 determining the major policies of the family trust company and whose
102 decisions are limited by policy standards established by other officers,
103 regardless of whether the policy standards have been adopted by the
104 board of directors. The chair of the board of directors, the president,
105 the chief executive officer, the chief financial officer, the senior trust
106 officer, all executive vice presidents of a family trust company, and all
107 managers if organized as a limited liability company are presumed to
108 be officers unless such officer is excluded, other than in the capacity
109 of a director, by resolution of the board of directors or members or by
110 the bylaws or operating agreement of the family trust company from
111 participating in major policy making functions of the family trust
112 company, and such excluded officer does not actually participate
113 therein;

114 (13) "Organizational instrument", the articles of incorporation for
115 a corporation or the articles of organization for a limited liability
116 company;

117 (14) "Principal place of business", the physical location where
118 officers of a family trust company direct, control, and coordinate the
119 trust company's activities;

120 (15) "Principal place of operations", the physical location in this
121 state where a foreign family trust company stores and maintains its
122 books and records pertaining to operations in this state;

123 (16) "Qualified beneficiary", the same meaning as defined under
124 subdivision (20) of section 456.1-103;

125 (17) "Registered agent", a business or individual designated by
126 a family trust company to receive service of process on behalf of the
127 family trust company;

128 **(18) "Reports of examinations, operations, or conditions", records**
129 **submitted to the secretary or prepared by the secretary as part of the**
130 **secretary's duties performed under sections 362.1010 to 362.1115;**

131 **(19) "Secretary", the secretary of state for the state of Missouri;**

132 **(20) "Working papers", the records of the procedures followed,**
133 **tests performed, information obtained, and conclusions reached in an**
134 **investigation under sections 362.1010 to 362.1115. The term shall also**
135 **include books and records.**

362.1020. If a family trust company limits its activities to the
2 **activities authorized under sections 362.1010 to 362.1115, then section**
3 **361.160 and sections 362.010 to 362.950 shall not apply to the family**
4 **trust company.**

362.1030. 1. No family trust company shall conduct business in
2 **this state unless such family trust company is registered with the**
3 **secretary in a format prescribed by the secretary.**

4 **2. To register, a family trust company that is not a foreign family**
5 **trust company shall file its organizational instrument with the**
6 **secretary. At a minimum, the organizational instrument shall state:**

7 **(1) The name of the designated relative;**

8 **(2) That the family trust company is a family trust company as**
9 **defined under section 362.1015; and**

10 **(3) That its operations will comply with sections 362.1010 to**
11 **362.1115.**

12 **3. A foreign family trust company shall register by filing with the**
13 **secretary:**

14 **(1) An initial registration to begin operations as a foreign family**
15 **trust company; and**

16 **(2) An application for a certificate of authority in accordance**
17 **with and subject to chapters 347 or 351.**

18 **4. A foreign family trust company application shall be submitted**
19 **on a form prescribed by the secretary and be signed, under penalty of**
20 **perjury, by an authorized representative. At a minimum, the**
21 **application shall include:**

22 **(1) A statement attesting that the foreign family trust company:**

23 **(a) Will comply with the provisions of sections 362.1010 to**
24 **362.1115; and**

25 **(b) Is in compliance with the family trust company laws and**

26 regulations of the jurisdiction of its incorporation or organization;

27 (2) The current telephone number and street address of:

28 (a) The foreign family trust company's principal place of
29 business in the jurisdiction of its incorporation or organization;

30 (b) The foreign family trust company's principal place of
31 operations; and

32 (c) Any other offices located within this state;

33 (3) The name and current street address in this state of its
34 registered agent;

35 (4) A certified copy of a certificate of good standing, or an
36 equivalent document, authenticated by the official having custody of
37 records in the jurisdiction where the foreign family trust company is
38 incorporated or organized;

39 (5) Satisfactory proof, as determined by the secretary, that the
40 foreign family trust company is organized in a manner similar to a
41 Missouri family trust company and is in compliance with the family
42 trust company laws and regulations of the jurisdiction in which the
43 foreign family trust company was incorporated or organized; and

44 (6) Any other information reasonably and customarily required
45 by the secretary of foreign corporations or foreign limited liability
46 companies seeking to qualify to conduct business in this state.

362.1035. 1. No family trust company shall be organized or
2 operated with a capital account of less than two hundred fifty thousand
3 dollars. The full amount of the initial capital account of a family trust
4 company shall consist of one or more asset groups described under
5 subsection 1 of section 362.1070, exclusive of all organization expenses.

6 2. A family trust company shall maintain:

7 (1) A physical office in this state where original or true copies,
8 including electronic copies, of all material business records and
9 accounts of the family trust company may be accessed and are readily
10 available for examination by the secretary. A family trust company
11 may also maintain one or more branch offices within or outside of this
12 state;

13 (2) A registered agent who maintains an office in this state;

14 (3) All applicable state and local business licenses, charters, and
15 permits; and

16 (4) A deposit account with a state-chartered or national financial

17 institution that has a principal or branch office in this state.

18 3. In addition to the requirements of subsection 2 of this section,
19 a foreign family trust company shall also:

20 (1) Be in good standing in the jurisdiction in which it is
21 incorporated or organized; and

22 (2) Stay in compliance with the family trust company laws and
23 regulations of such jurisdiction.

 362.1037. Exclusive authority to manage a family trust company
2 shall be vested in:

3 (1) If a corporation, a board of directors that consists of at least
4 three directors; or

5 (2) If a limited liability company, a board of directors or
6 managers that consists of three directors or managers.

7 At least one director or manager of the company shall be a resident of
8 this state.

 362.1040. 1. One or more persons may subscribe to an
2 organizational instrument in writing for the purpose of forming a
3 family trust company, subject to the conditions prescribed by law.

4 2. The organizational instrument of a family trust company shall
5 set forth all of the information required under chapters 347 or 351, as
6 applicable, and the following:

7 (1) The name of the company, which must distinguish the
8 company from any other nonfamily trust company or family trust
9 company formed or engaging in business in this state. If the word
10 "trust" is included in the name, it shall be immediately preceded by the
11 word "family" so as to distinguish the entity from a nonfamily trust
12 company operating under this chapter. This subdivision shall not apply
13 to a foreign family trust company using a fictitious name that is
14 registered and maintained in this state pursuant to the requirements
15 administered by the secretary and that distinguishes the foreign family
16 trust company from a nonfamily trust company authorized to operate
17 under this chapter;

18 (2) The purpose for which the company is formed, which shall
19 clearly identify the restricted activities permissible to a family trust
20 company under sections 362.1010 to 362.1115; and

21 (3) A statement affirming that the family trust company shall not
22 engage in trust company business with the general public.

23 3. The term "trust company" in the name adopted by a family
24 trust company shall not violate section 362.425.

 362.1045. 1. A family trust company may procure and maintain
2 fidelity bonds on all active officers, directors, managers, and members
3 acting in a managerial capacity and on all employees of the company
4 in order to indemnify the family trust company against loss resulting
5 from dishonest, fraudulent, or criminal acts or omissions committed by
6 any such person, whether acting alone or in combination with other
7 persons and regardless of whether such person receives a salary or
8 other compensation from the company.

9 2. A family trust company may also procure and maintain an
10 errors and omissions insurance policy in which the family trust
11 company is listed as the insured to cover the acts and omissions of
12 officers, directors, managers, and members acting in a managerial
13 capacity, regardless of whether any such person receives a salary or
14 other compensation from the company.

15 3. A family trust company may also procure and maintain other
16 insurance policies necessary or desirable in connection with the
17 business of the company including, but not limited to, one or more
18 casualty insurance policies.

 362.1050. 1. A family trust company shall maintain its fiduciary
2 books and records separate and distinct from other records of the
3 company and shall segregate all assets held in any fiduciary capacity
4 from other assets of the company.

5 2. Assets received or held in a fiduciary capacity by a family
6 trust company shall not be subject to the debts or obligations of the
7 company.

 362.1055. 1. A family trust company shall file an annual
2 registration report with the secretary.

3 2. The annual registration report filed by a family trust company
4 that is not a foreign family trust company shall include:

5 (1) A statement by an authorized representative verifying that
6 the family trust company is in compliance with the provisions of
7 sections 362.1010 to 362.1115 and with applicable federal laws
8 including, but not limited to, anti-money laundering and customer
9 identification rules or regulations;

10 (2) The name of the company's designated relative and the street

11 address for its principal place of business; and

12 (3) Any other information reasonably and customarily required
13 by the secretary of general business corporations in connection with
14 filing their annual registration reports.

15 3. The annual registration report filed by a foreign family trust
16 company shall include:

17 (1) A statement by an authorized representative verifying that
18 the foreign family trust company is in compliance with the provisions
19 of sections 362.1010 to 362.1115, with the family trust company laws and
20 regulations of the jurisdiction in which it was incorporated or
21 organized, and with applicable federal laws including, but not limited
22 to, anti-money laundering and customer identification rules or
23 regulations;

24 (2) The current telephone number and street address of the
25 foreign family trust company's principal place of business in the
26 jurisdiction in which it was incorporated or organized;

27 (3) The current telephone number and street address of the
28 foreign family trust company's principal place of operations;

29 (4) The current telephone number and address of the physical
30 location of any other offices located in this state;

31 (5) The name and current street address in this state of the trust
32 company's registered agent;

33 (6) Documentation, to the satisfaction of the secretary, showing
34 that the foreign family trust company is in compliance with the family
35 trust company laws and regulations of the jurisdiction in which it was
36 incorporated or organized; and

37 (7) Any other information reasonably and customarily required
38 by the secretary of general business corporations in connection with
39 filing their annual registration reports.

40 4. An annual registration report shall be submitted on a form
41 prescribed by the secretary and signed under penalty of perjury by an
42 authorized representative.

362.1060. 1. A family trust company may, but only for family
2 members:

3 (1) Act as a sole or co-personal representative, executor, or
4 curator for a probate estate within or outside this state;

5 (2) Act as an attorney-in-fact or agent under a power of attorney;

6 **(3) Except as provided under section 362.1065, act within or**
7 **outside this state as a sole fiduciary or cofiduciary, including acting as**
8 **a trustee, advisory agent, assignee, assignee for the benefit of creditors,**
9 **authenticating agent, bailee, bond or indenture trustee, conservator,**
10 **conversion agent, custodian, escrow agent, fiscal or paying agent,**
11 **financial advisor, guardian, investment advisor or manager, managing**
12 **agent, purchase agent, receiver, registrar, safekeeping or subscription**
13 **agent, transfer agent for entities other than public companies, warrant**
14 **agent, or other similar capacity generally performed by a corporate**
15 **trustee. In so acting, the family trust company may possess, purchase,**
16 **sell, invest, reinvest, safekeep, or otherwise manage or administer the**
17 **real or personal property of family members and individuals;**

18 **(4) Exercise the powers of a corporation or limited liability**
19 **company incorporated or organized under the laws of this state, or**
20 **qualified to transact business as a foreign corporation or limited**
21 **liability company under the laws of this state that are reasonably**
22 **necessary to enable the trust company to fully exercise a power**
23 **conferred under sections 362.1010 to 362.1115 in accordance with**
24 **commonly accepted customs and usages;**

25 **(5) Delegate duties and powers, including investment and**
26 **management functions under section 469.909, in accordance with the**
27 **powers granted to a trustee under chapter 456 or other applicable law**
28 **and retain agents, attorneys, accountants, investment advisors, or other**
29 **individuals or entities to advise or assist the family trust company in**
30 **the exercise of its powers and duties under sections 362.1010 to**
31 **362.1115 and chapter 456. Such exercise of power may include, but is**
32 **not limited to, retaining a bank trust department or a public trust**
33 **company other than another family trust company; and**

34 **(6) Perform all acts necessary to exercise the powers enumerated**
35 **in this section or authorized under sections 362.1010 to 362.1115 and**
36 **other applicable laws of this state.**

37 **2. A foreign family trust company in good standing in the**
38 **jurisdiction in which it is incorporated or organized may exercise all**
39 **the trust powers in this state that a Missouri family trust company may**
40 **exercise.**

362.1065. Notwithstanding any other provision of sections
2 **362.1010 to 362.1115, no family trust company shall engage in**

3 commercial banking. However, a family trust company may establish
4 accounts at financial institutions for its own purposes or on behalf of
5 family members to whom it provides services under sections 362.1010
6 to 362.1115.

362.1070. 1. The assets forming the minimum capital account of
2 a family trust company shall:

3 (1) Consist of cash, United States Treasury obligations, or any
4 combination thereof; and

5 (2) Have an aggregate market value of at least one hundred
6 percent of the company's required capital account, as specified under
7 subsection 1 of section 362.1035. If the aggregate market value of one
8 hundred percent of the company's capital account is, at any time, less
9 than the amount required under subsection 1 of section 362.1035, the
10 company shall have five business days to bring such capital account
11 into compliance with subsection 1 of section 362.1035.

12 2. A family trust company may purchase or rent real or personal
13 property for use in conducting business and other activities of the
14 company.

15 3. Notwithstanding any other provision of law, a family trust
16 company may invest funds for its own account, other than those
17 required or allowed under subsection 1 or 2 of this section, in any type
18 or character of equity securities, debt securities, or other assets.

19 4. Notwithstanding any other provision of law, a family trust
20 company may, while acting as a fiduciary, purchase directly from
21 underwriters or broker-dealers or purchase in the secondary market:

22 (1) Bonds or other securities underwritten or brokered by:

23 (a) The family trust company;

24 (b) A family affiliate; or

25 (c) A syndicate, including the family trust company or a family
26 affiliate; and

27 (2) Securities of investment companies for which the family trust
28 company acts as an advisor, custodian, distributor, manager, registrar,
29 shareholder servicing agent, sponsor, or transfer agent. For purposes
30 of this section, investment companies shall be deemed to include
31 mutual funds, closed-end funds, or unit investment trusts as defined
32 under the Investment Company Act of 1940, 76 P.L. 768, as amended.

33 5. The authority granted under subsection 4 of this section may

34 **be exercised only if:**

35 **(1) The investment is not expressly prohibited by the instrument,**
36 **judgment, decree, or order that establishes the fiduciary relationship;**

37 **(2) The family trust company procures in writing the consent of**
38 **all cofiduciaries with discretionary investment powers to the**
39 **investment, if any; and**

40 **(3) The family trust company discloses its intent to exercise the**
41 **authority granted under subsection 4 of this section in writing to all of**
42 **the trust company's account statement recipients before the first**
43 **exercise of such authority, and each such disclosure states:**

44 **(a) Any interest the family trust company has or reasonably**
45 **expects to have in the underwriting or distribution of the bonds or**
46 **securities;**

47 **(b) Any fee or other compensation received or reasonably**
48 **expected to be received by the family trust company as a result of the**
49 **transaction or services provided to an investment company; and**

50 **(c) Any relationship between the family trust company and an**
51 **investment company.**

52 **6. Subsections 4 and 5 of this section shall not affect the degree**
53 **of prudence required of fiduciaries under the laws of this**
54 **state. However, a purchase of bonds or securities under this section**
55 **shall be presumed unaffected by a conflict between the fiduciary's**
56 **personal and fiduciary interests if such purchase:**

57 **(1) Is negotiated at a fair price;**

58 **(2) Is in accordance with:**

59 **(a) The interest of the qualified beneficiaries of the trust for**
60 **which the purchase is made; and**

61 **(b) The purposes of the trust; and**

62 **(3) Otherwise complies with:**

63 **(a) The Missouri prudent investor act, sections 469.900 to 469.913,**
64 **unless such compliance is waived in a manner as provided by law; and**

65 **(b) The terms of the instrument, judgment, decree, or order**
66 **establishing the fiduciary relationship.**

67 **7. Notwithstanding subsections 1 through 6 of this section, no**
68 **family trust company shall, while acting as a fiduciary, purchase a**
69 **bond or security issued by the family trust company, its parent, or a**
70 **subsidiary company of either unless:**

- 71 **(1) The family trust company is expressly authorized to do so by:**
72 **(a) The terms of the instrument creating the trust for which such**
73 **purchase is made;**
74 **(b) A court order;**
75 **(c) The written consent of the settlor of such trust for which the**
76 **family trust company is serving as trustee; or**
77 **(d) The written consent of every adult qualified beneficiary of**
78 **such trust who, at the time of such purchase, is entitled to receive**
79 **income under the trust or who would be entitled to receive a**
80 **distribution of principal if the trust were terminated; and**
81 **(2) The purchase of the security is at a fair price and complies**
82 **with the Missouri prudent investor act, sections 469.900 to 469.913,**
83 **unless compliance is waived in a manner as provided by law, and with**
84 **the terms of the instrument, judgment, decree, or order establishing the**
85 **fiduciary relationship.**
- 86 **8. Except as otherwise expressly limited by this section, a family**
87 **trust company is authorized, without limiting any powers otherwise**
88 **conferred on fiduciaries by law, to take any of the following actions**
89 **while acting as a fiduciary, and such actions shall be presumed to be**
90 **unaffected by a conflict between the fiduciary's personal and fiduciary**
91 **interests:**
- 92 **(1) Make an equity investment in a closely held entity that may**
93 **or may not be marketable and that is directly or indirectly owned or**
94 **controlled by one or more family members;**
95 **(2) Place a security transaction using a broker who is a family**
96 **member;**
97 **(3) Enter into an agreement with a family member who is the**
98 **settlor or a qualified beneficiary of a trust with respect to the**
99 **appointment of the family trust company as a fiduciary of the trust or**
100 **with respect to the compensation of the family trust company for**
101 **service as a fiduciary;**
102 **(4) Transact business with a family member;**
103 **(5) Transact business with or invest in any asset of another trust,**
104 **estate, guardianship, or conservatorship for which the family trust**
105 **company is a fiduciary or in which a family member has an interest;**
106 **(6) Deposit trust assets in a financial institution that is owned,**
107 **controlled, or operated by one or more family members;**

108 **(7) Purchase, sell, hold, own, or invest in a security, bond, real**
109 **property, personal property, stock, or other asset of a family member;**
110 **and**

111 **(8) With or without adequate security, lend moneys to or borrow**
112 **moneys from a family member or a trust, estate, or guardianship for**
113 **which the family trust company serves as a fiduciary.**

114 **9. If not inconsistent with and subject to the terms of subsections**
115 **4 through 8 of this section, the duty of loyalty under section 456.8-802**
116 **applies to a family trust company when the family trust company serves**
117 **as trustee of a trust whose administration is subject to chapter 456.**

362.1075. If a family trust company is required to make an oath,
2 **affirmation, affidavit, or acknowledgment regarding a fiduciary**
3 **capacity in which the family trust company is acting or preparing to**
4 **act, a director, officer, or, if the company is a limited liability company,**
5 **a manager or officer expressly authorized by the family trust company**
6 **shall make and, if required, subscribe to such oath, affirmation,**
7 **affidavit, or acknowledgment on behalf of the company.**

362.1080. No family trust company shall advertise its services to
2 **the public.**

362.1085. 1. The secretary may examine or investigate a family
2 **trust company at any time the secretary deems necessary to determine**
3 **if the family trust company engaged in an act prohibited under section**
4 **362.1065 or 362.1080 and, if a family trust company engaged in such act,**
5 **to determine whether any other applicable law was violated.**

6 **2. The secretary shall examine the books and records of a foreign**
7 **family trust company as necessary to determine if such trust company**
8 **complies with sections 362.1010 to 362.1115. In connection with an**
9 **examination of the books and records of the trust company, the**
10 **secretary may rely upon the most recent examination report, review,**
11 **certification letters, or similar documentation issued by the agency**
12 **supervising the foreign family trust company in the jurisdiction in**
13 **which the foreign family trust company is incorporated or**
14 **organized. The secretary's examination of the books and records of a**
15 **foreign family trust company shall be, to the extent practicable, limited**
16 **to books and records of operations in this state.**

17 **3. For each examination or investigation of a family trust**
18 **company under this section, the trust company shall pay the costs of**

19 the examination or investigation by the secretary. As used in this
20 subsection, the term "costs" means the salary and travel expenses of
21 field staff that are directly attributable to the examination or
22 investigation of the trust company and the travel expenses of any
23 supervisory and support staff required as a result of examination or
24 investigation findings. The mailing of payment for costs incurred shall
25 be postmarked within thirty days after the receipt of a notice that
26 states the costs are due. The secretary may levy a late payment of up
27 to one hundred dollars per day for each day that a payment is overdue
28 unless waived for good cause. However, if the late payment of costs is
29 intentional, the secretary may levy an administrative fine of up to one
30 thousand dollars per day for each day the payment is overdue.

31 4. The secretary may establish by rule the requirements and
32 records necessary to demonstrate conformity with sections 362.1010 to
33 362.1115 by a family trust company.

362.1090. 1. The secretary may issue and serve upon a family
2 trust company or family trust company affiliated party a notice of
3 charges if the secretary has reason to believe that such company,
4 family trust company affiliated party, or individual named therein is
5 engaging in or has engaged in any of the following acts:

6 (1) The company fails to satisfy the requirements of a family
7 trust company or foreign family trust company under sections 362.1010
8 to 362.1115;

9 (2) A violation of section 362.1035, 362.1040, 362.1050, 362.1055,
10 362.1060, or 362.1080;

11 (3) A violation of any rule of the secretary;

12 (4) A violation of any order of the secretary;

13 (5) A breach of any written agreement with the secretary;

14 (6) A prohibited act or practice under section 362.1065;

15 (7) A willful failure to provide information or documents to the
16 secretary upon written request;

17 (8) An act of commission or omission that is judicially
18 determined by a court of competent jurisdiction to be a breach of trust
19 or fiduciary duty; or

20 (9) A violation of state or federal law related to anti-money
21 laundering, customer identification, or any related rule or regulation.

22 2. The notice of charges shall contain the statement of facts and

23 notice of opportunity for a hearing.

24 3. If no hearing is requested within the time allowed under the
25 notice of charges or if a hearing is held and the secretary finds that
26 any of the charges are true, the secretary may enter an order directing
27 the family trust company, family trust company affiliated party, or the
28 individual named in the notice of charges to cease and desist such
29 conduct and to take corrective action.

30 4. If the family trust company, family trust company affiliated
31 party, or the individual named in the notice of charges fails to respond
32 to the notice of charges within the time allotted therein, such failure
33 constitutes a default and justifies the entry of a cease and desist order.

34 5. A contested or default cease and desist order is effective when
35 reduced to writing and served upon the family trust company, family
36 trust company affiliated party, or the individual named therein. An
37 uncontested cease and desist order is effective as agreed.

38 6. If the secretary finds that conduct described under subsection
39 1 of this section is likely to cause substantial prejudice to members,
40 shareholders, beneficiaries of fiduciary accounts of the family trust
41 company, or beneficiaries of services rendered by the family trust
42 company, the secretary may issue an emergency cease and desist order
43 requiring the family trust company, family trust company affiliated
44 party, or individual named therein to immediately cease and desist
45 from engaging in the conduct stated and to take corrective action. The
46 emergency order is effective immediately upon service of a copy of the
47 order upon the family trust company or family trust company affiliated
48 party and shall remain effective for ninety days. If the secretary begins
49 nonemergency cease and desist proceedings under subsection 1 of this
50 section, the emergency order shall remain effective until the conclusion
51 of the proceedings under this section.

52 7. A family trust company shall have ninety days to wind up its
53 affairs after entry of any order to cease and desist from operating as a
54 family trust company. If a family trust company that is not a foreign
55 family trust company is still operating after ninety days, the secretary
56 may seek an order from a circuit court for the annulment or dissolution
57 of the company. If a foreign family trust company is still operating
58 after ninety days, the secretary may seek an injunction from a circuit
59 court restraining the company from continuing to operate in this state.

362.1095. If a family trust company fails to submit within the
2 prescribed period its annual registration report or any other report
3 required by sections 362.1010 to 362.1115 or rule, the secretary may
4 impose a fine of up to one hundred dollars for each day that the annual
5 registration report or other report is overdue. Failure to provide the
6 annual registration report within sixty days after the end of the
7 calendar year shall automatically result in termination of the
8 registration of a family trust company. A family trust company may
9 have its registration automatically reinstated by submitting to the
10 secretary, on or before August thirty-first of the calendar year in which
11 the annual registration report is due, the company's annual registration
12 report, a five hundred dollar late fee, and the amount of any fine
13 imposed by the secretary under this section. A family trust company
14 that fails to renew or reinstate its registration shall wind up its affairs
15 on or before November thirtieth of the calendar year in which such
16 failure occurs.

362.1100. 1. The secretary may issue and serve upon a family
2 trust company and a family trust company affiliated party a notice of
3 charges if the secretary has reason to believe that the family trust
4 company affiliated party is engaging or has engaged in conduct that:
5 (1) Demonstrates that the trust company does not satisfy the
6 requirements of a family trust company or of a foreign family trust
7 company under sections 362.1010 to 362.1115;
8 (2) Is a prohibited act or practice under section 362.1065;
9 (3) Violates section 362.1035, 362.1040, 362.1050, 362.1055,
10 362.1060, or 362.1080;
11 (4) Violates any other law involving fraud or moral turpitude
12 that constitutes a felony;
13 (5) Violates a state or federal law related to anti-money
14 laundering, customer identification, or any related rule or regulation;
15 (6) Is a willful violation of a rule of the secretary;
16 (7) Is a willful violation of an order of the secretary;
17 (8) Is a willful breach of a written agreement with the secretary;
18 or
19 (9) Is an act of commission or omission or a practice that the
20 secretary has reason to believe is a breach of trust or fiduciary duty.
21 2. The notice of charges shall contain a statement of facts and

22 notice of opportunity for a hearing.

23 3. If no hearing is requested within the time allowed in the
24 notice of charges or if a hearing is held and the secretary finds that
25 any of the charges in the notice of charges are true, the secretary may
26 enter an order that removes the family trust company affiliated party
27 from the family trust company or that restricts or prohibits the family
28 trust company affiliated party from participating in the affairs of the
29 family trust company, state financial institution, subsidiary, or service
30 corporation.

31 4. If the family trust company affiliated party fails to respond to
32 the notice of charges within the time allotted in the notice of charges,
33 such failure constitutes a default and justifies the entry of an order of
34 removal.

35 5. A contested or default order of removal is effective when
36 served upon the family trust company and the family trust company
37 affiliated party. An uncontested order of removal is effective as agreed.

38 6. (1) The chief executive officer of a family trust company or
39 the person holding the equivalent office shall promptly notify the
40 secretary if such person has actual knowledge that a family trust
41 company affiliated party is charged with a felony in a state or federal
42 court.

43 (2) If a family trust company affiliated party is charged with a
44 felony in a state or federal court or, in a court of a foreign country with
45 which the United States maintains diplomatic relations, is charged with
46 an offense that involves a violation of law relating to fraud, currency
47 transaction reporting, money laundering, theft, or moral turpitude and
48 such offense is equivalent to a felony charge under state or federal law,
49 then the secretary may enter an emergency order that suspends the
50 family trust company affiliated party or that restricts or prohibits
51 participation by such party in the affairs of the family trust company
52 or any state financial institution, subsidiary, or service corporation
53 effective upon service of the order on the company and such family
54 trust company affiliated party.

55 (3) The order shall contain notice of opportunity for a hearing,
56 at which the family trust company affiliated party may request a
57 post-suspension hearing to show that continued service to or
58 participation in the affairs of the family trust company does not pose

59 a threat to the interests of the company. In accordance with applicable
60 rules, the secretary shall notify the family trust company affiliated
61 party whether the order suspending or prohibiting the family trust
62 company affiliated party from participating in the affairs of a family
63 trust company, or state financial institution, subsidiary, or service
64 corporation will be rescinded or otherwise modified. The emergency
65 order shall remain in effect, unless otherwise modified by the
66 secretary, until the criminal charge is disposed. The emergency order
67 shall dissolve upon the final, unappealed dismissal of all charges
68 against or the acquittal of the family trust company affiliated
69 party. Such occurrences shall not prohibit the secretary from
70 instituting proceedings under subsection 1 of this section. If the family
71 trust company affiliated party charged is convicted or pleads guilty or
72 nolo contendere, regardless of adjudication, the emergency order shall
73 become final.

74 7. No family trust company affiliated party removed from office
75 under this section shall be eligible for reelection to such office or to
76 any other official position in a family trust company or financial
77 institution in this state except with the written consent of the
78 secretary. A family trust company affiliated party who is removed,
79 restricted, or prohibited from participation in the affairs of a family
80 trust company or state financial institution under this section may
81 petition the secretary for modification or termination of such removal,
82 restriction, or prohibition.

83 8. The resignation, termination of employment or participation,
84 or separation from a family trust company of the family trust company
85 affiliated party shall not affect the jurisdiction and authority of the
86 secretary to issue a notice and proceed under this section against the
87 family trust company affiliated party if such notice is served within six
88 years of the date such person ceased to be a family trust company
89 affiliated party to such company.

362.1105. 1. The books and records of a family trust company are
2 confidential and shall be made available for inspection and
3 examination only:

- 4 (1) To the secretary or the secretary's authorized representative;
- 5 (2) To any person authorized to act for the company;
- 6 (3) As compelled by a court, pursuant to a subpoena issued in

7 accordance with state or federal law. Before the production of the
8 books and records, the party seeking production shall agree to
9 reimburse the company for the reasonable costs and fees incurred in
10 compliance with the production. If the parties disagree on the amount
11 of reimbursement, the party seeking the records may request the court
12 that issued the subpoena to set the amount of reimbursement;

13 (4) Pursuant to a subpoena held by any federal or state law
14 enforcement or prosecutorial instrumentality authorized to investigate
15 suspected criminal activity;

16 (5) As authorized by, if a corporation, the board of directors, or
17 if limited liability company, the managers; or

18 (6) As provided under subsection 2 of this section.

19 2. (1) If a corporation, each customer and stockholder, or, if a
20 limited liability company, each member has the right to inspect the
21 books and records of a family trust company as they pertain to such
22 person's accounts or the determination of such person's voting rights.

23 (2) The books and records pertaining to customers, members, and
24 stockholders of a family trust company shall be kept confidential by the
25 company and its directors, managers, officers, and employees. The
26 books and records of customers, members, and stockholders shall not
27 be released except upon the express authorization of the customer as
28 to his or her own accounts or a stockholder or member regarding his
29 or her voting rights. However, information may be released without
30 the authorization of a customer, member, or shareholder in a manner
31 prescribed by the board of directors of a corporation or managers of a
32 limited liability company for the purposes of verifying or corroborating
33 the existence or amount of a customer's account if such information is
34 reasonably provided to meet the needs of commerce and to ensure
35 accurate credit information. Notwithstanding this subdivision, this
36 subsection shall not prohibit a family trust company from disclosing
37 financial information as permitted under 15 U.S.C. Section 6802, as
38 amended.

39 (3) The willful unlawful disclosure of confidential information in
40 violation of this section shall be a class E felony.

41 (4) This subsection shall not apply to a foreign family trust
42 company. The laws of the jurisdiction in which a foreign family trust
43 company was incorporated or organized govern the rights of its

44 customers, members, and stockholders to inspect its books and records.

45 **3. For purposes of this section, the term "books and records" shall**
46 **include, but is not limited to, the initial registration documents of a**
47 **family trust company under section 362.1030 and the annual**
48 **registration report made by a family trust company under section**
49 **362.1055.**

362.1110. 1. A family trust company shall keep at its principal
2 **place of business or principal place of operations:**

3 **(1) Full and complete records of the names and residences of all**
4 **its shareholders or members;**

5 **(2) The number of shares or membership units held by each, as**
6 **applicable; and**

7 **(3) The ownership percentage of each shareholder or member.**

8 **The records are subject to inspection by all shareholders or members**
9 **of the trust company and the officers authorized to assess tax**
10 **documents under state authority during the normal business hours of**
11 **the trust company. A current list of shareholders or members shall be**
12 **made available to the secretary's examiners for their inspection and,**
13 **upon the request of the secretary, shall be submitted to the secretary.**

14 **2. The secretary shall retain for at least ten years:**

15 **(1) Examination reports;**

16 **(2) Investigatory records;**

17 **(3) The organizational instrument of a family trust company; and**

18 **(4) The annual registration reports filed by a family trust**
19 **company.**

20 **3. A copy of any document on file with the secretary that is**
21 **certified by the secretary as a true copy may be introduced in evidence**
22 **as if it were the original. The secretary shall establish a schedule of**
23 **fees for preparing true copies of documents.**

24 **4. Orders issued by courts or administrative law judges for the**
25 **production of confidential records or information shall provide for**
26 **inspection in camera by the court or the administrative law judge. If**
27 **the court or administrative law judge determines that the documents**
28 **requested are relevant or would likely lead to the discovery of**
29 **admissible evidence, the documents shall be subject to further orders**
30 **by the court or the administrative law judge to protect the**
31 **confidentiality thereof. An order directing the release of information**

32 shall be immediately reviewable, and a petition by the secretary for
33 review of the order shall automatically stay any further proceedings in
34 a trial court or administrative hearing until the disposition of the
35 petition by the reviewing court. If any other party files a petition for
36 review, such filing shall stay proceedings only upon an order of the
37 reviewing court.

362.1115. 1. The following information held by the secretary is
2 confidential and exempt from chapter 610:

3 (1) Any personal identifying information appearing in records
4 relating to a registration or an annual certification of a family trust
5 company;

6 (2) Any personal identifying information appearing in records
7 relating to an examination of a family trust company;

8 (3) Any personal identifying information appearing in reports of
9 examinations, operations, or conditions of a family trust company,
10 including working papers;

11 (4) Any portion of a list of names of the shareholders or members
12 of a family trust company;

13 (5) Information received by the secretary from a person from
14 another state or nation or the federal government that is otherwise
15 confidential or exempt under the laws of such state or nation or under
16 federal law; and

17 (6) An emergency cease and desist order issued under section
18 362.1090 until the emergency order is made permanent, unless the
19 secretary finds that such confidentiality will result in substantial risk
20 of financial loss to the public.

21 2. Information made confidential and exempt under subsection
22 1 of this section may be disclosed by the secretary to:

23 (1) The authorized representative or representatives of the
24 family trust company under examination. The authorized
25 representative or representatives shall be identified in a resolution or
26 by written consent of the board of directors if a corporation or the
27 managers if a limited liability company;

28 (2) A fidelity insurance company upon written consent of the
29 family trust company's board of directors if a corporation or its
30 managers if a limited liability company;

31 (3) An independent auditor upon written consent of the family

32 trust company's board of directors if a corporation or its managers if
33 a limited liability company;

34 (4) A liquidator, receiver, or conservator if appointed. However,
35 any portion of the information that discloses the identity of a
36 bondholder, customer, family member, member, or stockholder shall be
37 redacted by the secretary before releasing such information;

38 (5) Any other state, federal, or foreign agency responsible for the
39 regulation or supervision of family trust companies;

40 (6) A law enforcement agency in the furtherance of such agency's
41 official duties and responsibilities;

42 (7) The appropriate law enforcement or prosecutorial agency for
43 the purpose of reporting any suspected criminal activity; or

44 (8) Comply with a legislative subpoena. A legislative body or
45 committee that receives records or information pursuant to such
46 subpoena shall maintain the confidential status of such records or
47 information. However, in a case involving the investigation of charges
48 against a public official subject to impeachment or removal, records or
49 information may be disclosed to the extent necessary as determined by
50 the legislative body or committee.

51 3. This section shall not prevent or restrict the publication of:

52 (1) A report required by federal law; or

53 (2) The name of the family trust company and the address of its
54 registered agent.

55 4. The willful disclosure of information made confidential and
56 exempt by this section is a class E felony.

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