

SECOND REGULAR SESSION

SENATE BILL NO. 984

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Read 1st time February 10, 2020, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5084S.02I

AN ACT

To repeal sections 362.1015, 362.1030, 362.1037, 362.1040, and 362.1070, RSMo, and to enact in lieu thereof five new sections relating to Missouri family trust companies.

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

Section A. Sections 362.1015, 362.1030, 362.1037, 362.1040, and 362.1070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 362.1015, 362.1030, 362.1037, 362.1040, and 362.1070, to read as follows:

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

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

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

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

(4) "Designated relative", a common ancestor of a family, either living or deceased, who is so designated in [an organizational instrument. No family trust company shall have more than one designated relative] **a family trust company's initial registration application and any annual registration report;**

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

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

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

27 (a) One or more family members; or

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

31 (7) "Family member":

32 (a) A designated relative;

33 (b) Any person within the tenth degree of lineal kinship of a designated
34 relative;

35 (c) Any person within the ninth degree of collateral kinship to a
36 designated relative;

37 (d) The spouse of any person who qualifies under paragraphs (a) through
38 (c) of this subdivision;

39 (e) Any former spouse of any person who qualifies under paragraphs (a)
40 through (c) of this subdivision;

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

43 (g) A family affiliate;

44 (h) An irrevocable trust funded exclusively by one or more family
45 members of which all permissible distributees, as defined under subdivision (16)
46 of section 456.1-103, qualify under paragraphs (a) through (g) of this subdivision
47 or are charitable foundations, charitable trusts, or other charitable entities; [or]

48 (i) **An irrevocable trust of which one or more family members are**
49 **the only permissible distributees; or**

50 (j) A revocable trust of which one or more family members are the sole
51 settlors.

52 For purposes of this subdivision, a legally adopted person shall be treated as a
53 natural child of the adoptive parents; a stepchild shall be treated as a natural

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

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

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

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

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

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

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

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

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

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

84 (e) Is not owned by or a subsidiary of a corporation, limited liability
85 company, or other business entity that is organized in or licensed by any foreign
86 country;

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

89 (12) "Officer", an individual, regardless of whether the individual has an

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

105 (13) "Organizational instrument", the articles of incorporation for a
106 corporation or the articles of organization for a limited liability company, **as they**
107 **may be amended or supplemented from time to time;**

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

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

114 (16) "Qualified beneficiary", the same meaning as defined under
115 subdivision (21) of section 456.1-103;

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

118 (18) "Reports of examinations, operations, or conditions", records
119 submitted to the secretary or prepared by the secretary as part of the secretary's
120 duties performed under sections 362.1010 to 362.1117;

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

122 (20) "Secretary's designee", an attorney-at-law or a certified public
123 accountant designated by the secretary under subsection 1 of section 362.1085;

124 (21) "Working papers", the records of the procedures followed, tests
125 performed, information obtained, and conclusions reached in an investigation

126 under sections 362.1010 to 362.1117. The term shall also include books and
127 records.

362.1030. 1. There is hereby established in the state treasury the "Family
2 Trust Company Fund", which shall consist of all fees collected by the secretary
3 from family trust companies registering as provided in this section. The state
4 treasurer shall be custodian of the fund. In accordance with sections 30.170 and
5 30.180, the state treasurer may approve disbursements. The fund shall be a
6 dedicated fund, and moneys in the fund shall be used solely to support the
7 secretary's role and fulfillment of duties under sections 362.1010 to
8 362.1117. Notwithstanding the provisions of section 33.080 to the contrary, any
9 moneys remaining in the fund at the end of the biennium shall revert to the
10 credit of the general revenue fund. The state treasurer shall invest moneys in the
11 fund in the same manner as other funds are invested. Any interest and moneys
12 earned on such investments shall be credited to the fund.

13 2. [No family trust company shall conduct business in this state unless
14 such family trust company pays a one-time original filing fee of five thousand
15 dollars to the secretary and registers with the secretary in a format prescribed
16 by the secretary. The secretary shall deposit all family trust company filing fees
17 into the family trust company fund established under subsection 1 of this section.

18 3. To register, a family trust company that is not a foreign family trust
19 company shall file its organizational instrument with the secretary. At a
20 minimum, the organizational instrument shall state:

21 (1) The name of the designated relative;

22 (2) That the family trust company is a family trust company as defined
23 under sections 362.1010 to 362.1117; and

24 (3) That its operations will comply with sections 362.1010 to 362.1117.

25 4. A foreign family trust company shall register by filing with the
26 secretary:

27 (1) An initial registration to begin operations as a foreign family trust
28 company; and

29 (2) An application for a certificate of authority in accordance with and
30 subject to chapters 347 or 351] **A family trust company that is not a foreign
31 family trust company shall not conduct business in this state unless
32 such family trust company:**

33 **(1) Files its organizational instrument with the secretary;**

34 **(2) Pays a one-time original filing fee of five thousand dollars to**

35 **the secretary; and**

36 **(3) Registers by filing with the secretary an initial registration**
37 **application in a format prescribed by the secretary.**

38 **3. A foreign family trust company shall not conduct business in**
39 **this state unless such foreign family trust company:**

40 **(1) Pays a one-time original filing fee of five thousand dollars to**
41 **the secretary;**

42 **(2) Registers by filing with the secretary an initial registration**
43 **application in a format prescribed by the secretary; and**

44 **(3) If such foreign family trust company is a corporation, files an**
45 **application for a certificate of authority, or, if such foreign family trust**
46 **company is a limited liability company, files an application for**
47 **registration.**

48 **4. The secretary shall deposit all family trust company filing fees**
49 **into the family trust company fund established under subsection 1 of**
50 **this section.**

51 **5. A foreign family trust company application shall be submitted on a**
52 **form prescribed by the secretary and be signed, under penalty of perjury, by an**
53 **authorized representative. At a minimum, the application shall include:**

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

55 **(a) Will comply with the provisions of sections 362.1010 to 362.1117; and**

56 **(b) Is in compliance with the family trust company laws and regulations**
57 **of the jurisdiction of its incorporation or organization;**

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

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

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

62 **(c) Any other offices located within this state;**

63 **(3) The name and current street address in this state of its registered**
64 **agent;**

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

68 **(5) Satisfactory proof, as determined by the secretary, that the foreign**
69 **family trust company is organized in a manner similar to a Missouri family trust**
70 **company and is in compliance with the family trust company laws and**

71 regulations of the jurisdiction in which the foreign family trust company was
72 incorporated or organized; and

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

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

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

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

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

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

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

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

17 (2) **A statement that** the purpose for which the company is formed[,
18 which shall clearly identify the restricted activities permissible to a family trust
19 company] **is to engage in any and all activities permitted** under sections
20 362.1010 to 362.1117; and

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

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

362.1070. 1. The assets forming the minimum capital account of a family
2 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 percent of the
6 company's required capital account, as specified under subsection 1 of section
7 362.1035. If the aggregate market value of one hundred percent of the company's
8 capital account is, at any time, less than the amount required under subsection
9 1 of section 362.1035, the company shall have five business days to bring such
10 capital account into compliance with subsection 1 of section 362.1035.

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

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

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

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

21 (a) The family trust company;

22 (b) A family affiliate; or

23 (c) A syndicate, including the family trust company or a family affiliate;

24 and

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

31 5. The authority granted under subsection 4 of this section may be
32 exercised only if:

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

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

37 (3) The family trust company discloses its intent to exercise the authority
38 granted under subsection 4 of this section in writing to all [of the trust company's
39 account statement recipients] **family members for whom the investment is**
40 **to be made, which shall occur** before the first exercise of such authority, and
41 each such disclosure states:

42 (a) Any interest the family trust company has or reasonably expects to
43 have in the underwriting or distribution of the bonds or securities;

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

47 (c) Any relationship between the family trust company and an investment
48 company.

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

54 (1) Is negotiated at a fair price;

55 (2) **If the family member served by the family trust company is**
56 **a trust**, is in accordance with:

57 (a) The interest of the qualified beneficiaries of the trust for which the
58 purchase is made; and

59 (b) The purposes of the trust; and

60 (3) Otherwise complies with:

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

63 (b) The terms of the instrument, judgment, decree, or order establishing
64 the fiduciary relationship.

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

68 (1) The family trust company is expressly authorized to do so by:

69 (a) [The terms of the instrument creating the trust for which such
70 purchase is made;

71 (b)] A court order;

72 (b) **The terms of the instrument, judgment, decree, or order**

73 **establishing the fiduciary relationship; or**

74 (c) **If the fiduciary relationship was established by a trust**
75 **instrument, then by** the written consent of the settlor [of such trust for which
76 the family trust company is serving as trustee; or

77 (d) The written consent of every adult qualified beneficiary of such trust
78 who, at the time of such purchase, is entitled to receive income under the trust
79 or who would be entitled to receive a distribution of principal if the trust were
80 terminated], **or of every adult qualified beneficiary, of the trust created**
81 **under that instrument for which such purchase is made; and**

82 (2) The purchase of the security is at a fair price and complies with the
83 Missouri prudent investor act, sections 469.900 to 469.913, unless compliance is
84 waived in a manner as provided by law, and with the terms of the instrument,
85 judgment, decree, or order establishing the fiduciary relationship.

86 8. Except as otherwise expressly limited by this section, a family trust
87 company is authorized, without limiting any powers otherwise conferred on
88 fiduciaries by law, to do any of the following actions while acting as a fiduciary,
89 and such actions shall be presumed to be unaffected by a conflict between the
90 fiduciary's personal and fiduciary interests:

91 (1) Make an equity investment in a closely held entity that may or may
92 not be marketable and that is directly or indirectly owned or controlled by one or
93 more family members;

94 (2) Place a security transaction using a broker who is a family member;

95 (3) Enter into an agreement with a family member who is the settlor or
96 a qualified beneficiary of a trust with respect to the appointment of the family
97 trust company as a fiduciary of the trust or with respect to the compensation of
98 the family trust company for service as a fiduciary;

99 (4) Transact business with a family member;

100 (5) Transact business with or invest in any asset of another trust, estate,
101 guardianship, or conservatorship for which the family trust company is a
102 fiduciary or in which a family member has an interest;

103 (6) Deposit trust assets in a financial institution that is owned, controlled,
104 or operated by one or more family members;

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

107 (8) With or without adequate security, lend moneys to or borrow moneys
108 from a family member or a trust, estate, or guardianship for which the family

109 trust company serves as a fiduciary.

110 9. If not inconsistent with and subject to the terms of subsections 4 to 8
111 of this section, the duty of loyalty under section 456.8-802 applies to a family
112 trust company when the family trust company serves as trustee of a trust whose
113 administration is subject to chapter 456.

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