

SECOND REGULAR SESSION

HOUSE BILL NO. 2539

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DUGGER.

6372H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 361.160, RSMo, and to enact in lieu thereof three new sections relating to private trust companies.

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

Section A. Section 361.160, RSMo, is repealed and three new sections enacted in lieu thereof, to be known as sections 361.158, 361.159, and 361.160, to read as follows:

361.158. 1. For purposes of sections 361.158 to 361.160, the following terms mean:

(1) "Director", the director of finance;

(2) "Division", the division of finance;

(3) "Family member", any individual who is related within the fourth degree of affinity or consanguinity to an individual or individuals who control a private trust company or to an individual or individuals who control one or more trusts or charitable organizations that control a private trust company;

(4) "Private trust company", a corporation or limited liability company organized or qualified to do business in this state that acts or proposes to act as a fiduciary to serve one or more family members but does not transact business with the general public. The articles of incorporation or articles of organization of a private trust company shall contain a statement affirming that the private trust company will not transact business with the general public;

(5) "Transact business with the general public", any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services; whether for a fee, commission, or any other type of remuneration; with any person that is not a family member or is a sole proprietorship, partnership, limited liability company,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 joint venture, association, corporation, trust, estate, business trust, or other company that
19 is not one hundred percent owned by one or more family members.

20 2. A private trust company engaging in the trust business in this state shall comply
21 with each and every provision of this chapter applicable to a trust company unless
22 otherwise specified in this section or unless expressly exempted therefrom in writing by the
23 director under this section or under a rule adopted by the division.

24 3. The minimum capital requirement of a private company shall be two hundred
25 fifty thousand dollars.

26 4. A private trust company or an institution seeking to become a private trust
27 company may request in writing that it be exempted from specified provisions of this
28 chapter. The director may approve the requested exemption in whole or in part. The
29 director shall not unreasonably withhold the director's approval of the requested
30 exemption.

31 5. All individuals who control a private trust company or control one or more trusts
32 or charitable organizations that control such private trust company shall be related to each
33 other within the second degree of affinity or consanguinity.

34 6. At the expense of the private trust company, the director may examine or
35 investigate the private trust company in connection with an application for exemption. The
36 director shall approve or deny the application no later than the sixty-first day after the
37 date such application was received by the director. The director may require the
38 submission of additional information as reasonably considered necessary to enable the
39 director to approve or deny the application. If the application presents novel or unusual
40 questions or if the director reasonably requires additional information, the director may
41 extend the time for approving or denying the application.

42 7. Any exemption granted under this section may be made subject to conditions or
43 limitations imposed by the director consistent with this chapter.

44 8. The division may promulgate rules to expand the definition of "transact business
45 with the general public"; specify the provisions of this chapter for which exemption may
46 be requested; and establish procedures and requirements for obtaining, maintaining, or
47 revoking any exemption. Any rule or portion of a rule, as that term is defined in section
48 536.010, that is created under the authority delegated in this section shall become effective
49 only if it complies with and is subject to all of the provisions of chapter 536 and, if
50 applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of
51 the powers vested with the general assembly pursuant to chapter 536 to review, to delay
52 the effective date, or to disapprove and annul a rule are subsequently held

53 unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted
54 after August 28, 2016, shall be invalid and void.

361.159. 1. A private trust company that requests an exemption from one or more
2 provisions of this chapter under section 361.158 shall file an application with the director
3 containing the following:

4 (1) A nonrefundable application fee as set by the division;

5 (2) A detailed statement under oath stating the private trust company's assets and
6 liabilities as of the end of the month previous to the filing of the application;

7 (3) A statement under oath of the reason for requesting the exemption;

8 (4) A statement under oath that the private trust company is not currently
9 transacting business with the public and that the company will not conduct business with
10 the public without the prior written permission of the director;

11 (5) The current street mailing address and telephone number of the physical
12 location in this state where the private trust company will maintain its books and records
13 with a statement under oath that such address is true and correct and is not a United States
14 Postal Service post office box, private mail box, postal box, or mail drop; and

15 (6) A list of the specific provisions for which the private trust company requests
16 exemption.

17 2. The director shall have authority to revoke any exemption granted under
18 subsection 4 of section 361.158 in the following circumstances:

19 (1) The private trust company makes, or is determined by the director to have
20 made, a false statement under oath on any document required to be filed under this
21 chapter or under any rule promulgated by the division;

22 (2) The private trust company fails to submit to an examination under subsection
23 1 of section 361.160; or

24 (3) The director reasonably determines that the private trust company is no longer
25 in compliance with any obligation or requirement imposed by section 361.158.

26 3. If the director determines to exercise the director's authority under subsection
27 2 of this section, the director shall, by personal delivery or by registered or certified mail
28 with return receipt requested, so notify the private trust company in writing. The
29 notification shall state clearly the grounds for the revocation. The notification shall state
30 its effective date, which shall not be before the thirtieth day after the date the notification
31 is received by the private trust company. During the period before the notification is
32 effective, the director shall afford the private trust company a reasonable opportunity to
33 resolve any issue that gave rise to revocation under subsection 2 of this section.

361.160. 1. The director of finance at least once each year, either personally or by a
2 deputy or examiner appointed by the director, shall visit and examine every bank and trust
3 company organized and doing business under the laws of this state, and every other corporation
4 which is by law required to report to the director; except, for banks or trust companies receiving
5 a Camel/MOECA 1 or Camel/MOECA 2 rating from the division of finance, the director of
6 finance at least once each eighteen calendar months, or for a private trust company at least once
7 each thirty-six months, either personally or by a deputy or examiner appointed by the director,
8 shall visit and examine such bank or trust company, and the director of finance, at the director's
9 discretion, may conduct the director's examination, or any part thereof, on the basis of
10 information contained in examination reports of other states, the Federal Deposit Insurance
11 Corporation or the Federal Reserve Board or in audits performed by certified public accountants.
12 [For purposes of this subsection, a private trust company is one that does not engage in trust
13 company business with the general public or otherwise hold itself out as a trustee or fiduciary
14 for hire by advertising, solicitation, or other means and instead operates for the primary benefit
15 of a family, relative of same family, or single family lineage, regardless of whether compensation
16 is received or anticipated.] The director shall be afforded prompt and free access to any
17 workpapers upon which a certified public accountant bases an audit. A certified public
18 accountant shall retain workpapers for a minimum of three years after the date of issuance of the
19 certified public accountant's report to the bank or trust company. The director or the director's
20 agent may concentrate the examinations on institutions which the director believes have safety
21 or soundness concerns.

22 2. The director, or the deputy or examiners designated by the director for that purpose,
23 shall have power to examine any such corporation whenever, in the director's judgment, it may
24 be deemed necessary or expedient, and shall have power to examine every agency located in this
25 state of any foreign banking corporation and every branch in this state of any out-of-state bank,
26 for the purpose of ascertaining whether it has violated any law of this state, and for such other
27 purposes and as to such other matters as the director may prescribe.

28 3. The director and the director's deputy and examiners shall have power to administer
29 oaths to any person whose testimony may be required in such examination or investigation of
30 any such corporation or agency, and to compel the appearance and attendance of any person for
31 the purpose of any such examination or investigation.

32 4. On every such examination inquiry shall be made as to the condition and resources
33 of such corporation, the mode of conducting and managing its affairs, the actions of its directors
34 or trustees, the investment of its funds, the safety and prudence of its management, the security
35 afforded to its creditors, and whether the requirements of its charter and of law have been

36 complied with in the administration of its affairs, and as to such other matters as the director may
37 prescribe.

38 5. The director may also make such special investigations as the director deems
39 necessary to determine whether any individual or corporation has violated any of the provisions
40 of this law.

41 6. Such examination may be made and such inquiry instituted or continued in the
42 discretion of the director after the director has taken possession of the property and business of
43 any such corporation, until it shall resume business or its affairs shall be finally liquidated in
44 accordance with the provisions of this chapter.

45 7. The result of each examination shall be certified by the director or the examiner upon
46 the records of the corporation examined and the result of all examinations during the biennial
47 period shall be embodied in the report to be made by the director of the department of insurance,
48 financial institutions and professional registration to the legislature.

49 8. The director may contract with regulators in other states to provide for the
50 examination of Missouri branches of out-of-state banks and branches of banks whose home state
51 is Missouri. The agreements may provide for the payment by the home state of the cost of
52 examinations conducted by the host state at the request of the home state regulators.

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