

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0183-02
Bill No.: HCS for HB 291
Subject: Corporations; Secretary of State; Banks and Financial Institutions; Estates, Wills and Trusts
Type: Original
Date: February 23, 2017

Bill Summary: This proposal establishes the Missouri Family Trust Company Act, which allows family trust companies to form and operate in Missouri.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$51,049)	(\$61,771)	(\$62,288)
Total Estimated Net Effect on General Revenue	(\$51,049)	(\$61,771)	(\$62,288)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Technology Trust Fund	(\$40,000)	\$0	\$0
Family Trust Company Fund	\$0	\$20,000	\$20,000
Total Estimated Net Effect on Other State Funds	(\$40,000)	\$20,000	\$20,000

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

☐ Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Office of the Secretary of State (SOS)** also assume they will have to contract with the vendor to change the automated processes performed by their business software. The vendor would need to add a new process which includes a new filing type, a new notification that is sent to this type of business about their annual report requirements, new forms, and new fees. They anticipate a one-time cost to the Office of the Secretary of State of \$60,000 to change the current software operated by the Business Services Division.

SOS assumes an additional FTE for an Investigator III in the Securities Divisions will be needed to fulfill the fiduciary duties in this proposal. The position will be an Investigator III at an annual salary of \$40,188.

It is unknown how many Missouri Family Trust Companies will be created. Each newly created Missouri Family Trust Company will pay a filing fee of \$5,000 to the Family Trust Company Fund. In addition, this legislation includes provisions such that if the trust company fails to file an annual report there is a fine of \$100 for each day the report is overdue and a \$500 late fee, also payable to the Family Trust Company Fund. Because this is a new filing type with a high cost of entry, we estimate 4 filings per year at \$5,000 each (\$20,000 total per year) for FY 2018, 2019 and 2020.

ASSUMPTION (continued)

Because the cost of the software update will be incurred prior to the effective date of the bill, only the \$20,000 received into the Family Trust Company Fund from FY 2018 filings will be able to be applied to the \$60,000 cost. Thus the FY 2018 cost of the software update will be:

Technology Trust Fund: \$40,000
Family Trust Company Fund: \$20,000

For the purpose of this proposed legislation, officials at the **Office of State Public Defender (SPD)** cannot assume that existing staff will provide effective representation for any new cases arising where indigent persons are charged with the proposed new crimes relating to disclosure of information regarding Family Trusts, which is a new Class E felony.

While the number of new cases (or cases with increased penalties) may be too few or uncertain to request additional funding for this specific bill, the SPD will continue to request sufficient appropriations to provide effective representation.

Oversight assumes the SPD can absorb the additional caseload that may result from this proposal.

Officials from the **Office of Prosecution Services, Office of the State Courts Administrator, Department of Corrections, Office of the State Treasurer and Department of Insurance, Financial Institutions and Professional Registration** each assume the proposal will have no fiscal impact on their respective organizations.

Officials from the **Attorney General's Office** assume that any potential costs arising from this proposal can be absorbed with existing resources.

This proposal will increase Total State Revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE FUND			
<u>Cost - SOS</u>			
Personal Services	(\$33,490)	(\$40,590)	(\$40,996)
Fringe Benefits	(\$17,559)	(\$21,181)	(\$21,292)
<u>Total Costs - SOS</u>	(\$51,049)	(\$61,771)	(\$62,288)
FTE Change - SOS	1 FTE	1 FTE	1 FTE
ESTIMATED NET EFFECT ON THE GENERAL REVENUE FUND	<u>(\$51,049)</u>	<u>(\$61,771)</u>	<u>(\$62,288)</u>
Estimated Net FTE change for General Revenue Fund	1 FTE	1 FTE	1 FTE
TECHNOLOGY TRUST FUND			
<u>Cost - SOS - portion of one-time vendor cost to change software</u>	(\$40,000)	\$0	\$0
ESTIMATED NET EFFECT ON THE TECHNOLOGY TRUST FUND	<u>(\$40,000)</u>	<u>\$0</u>	<u>\$0</u>
FAMILY TRUST COMPANY FUND			
<u>Revenue - SOS - registration fees</u>	\$20,000	\$20,000	\$20,000
<u>Cost - SOS - portion one-time vendor cost to change software</u>	(\$20,000)	\$0	\$0
ESTIMATED NET EFFECT ON THE FAMILY TRUST COMPANY FUND	<u>\$0</u>	<u>\$20,000</u>	<u>\$20,000</u>
<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020

\$0

\$0

\$0

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This proposal establishes the Missouri Family Trust Company Act, which allows family trust companies to form and operate in this state. In its main provisions, the proposal:

- (1) Requires a family trust company to register with the Secretary of State, have a physical office and a registered agent in Missouri, and maintain a capital account of \$250,000 or more;
- (2) Allows a foreign family trust company to register with the Secretary of State and operate in Missouri provided that the foreign family trust company is organized similar to a Missouri family trust company and is in compliance with the family trust company laws and regulations in the jurisdiction in which the foreign family trust company was incorporated or organized;
- (3) Requires a corporation or a limited liability company to be governed by a board of three directors or managers and at least one of the directors or managers is a Missouri resident;
- (4) Specifies that the organizational instrument of the family trust company must include: a name for the trust company that distinguishes it, a purpose statement which clearly identifies the restricted activities permissible, and a statement affirming the family trust company will not engage in trust company business with the general public;
- (5) Allows a family trust company to procure fidelity bonds, errors and omissions insurance, and other insurance necessary or desirable in connection with the business of the family trust company;
- (6) Requires a family trust company to file an annual registration report, signed by an authorized representative, with the Secretary of State and to keep at its principal place of business complete records of the names and addresses of all shareholders or members, and the number of shares and percentage of ownership of each member or shareholder. The records must be kept confidential except for inspection and examination as compelled by the secretary, a court, or to comply with a subpoena, or for inspection by all shareholders or members of the trust company and its authorized officers. The willful disclosure of confidential information under this act will be a class E felony;

FISCAL DESCRIPTION (continued)

(7) Allows a family trust company to act for a family member as a sole or co-personal representative, executor, or curator for a probate estate; act as an attorney-in-fact or agent under a power of attorney; act as a sole fiduciary or co-fiduciary including any similar capacity generally performed by a corporate trustee. A family trust company may possess, purchase, sell, invest, or otherwise manage or administer the real or personal property of family members and individuals.

A family trust company can exercise the powers of a corporation, limited liability company, or a foreign corporation or limited liability company to enable the trust company to perform all acts necessary to fully exercise the powers conferred by this act and Missouri law in accordance with commonly accepted customs and usages and delegate those duties and powers;

(8) Specifies that a foreign family trust company in good standing in the jurisdiction in which it is incorporated or organized may exercise all the trust powers in this state that a Missouri family trust company may exercise;

(9) Prohibits a family trust company from engaging in commercial banking, but allows a family trust company to establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services under this act;

(10) Allows a family trust company to purchase or rent real or personal property for use in conducting business and other activities of the company and allows a family trust company to invest funds for its own account, other than those required to meet the minimum investment of the family trust, in any type or character of equity securities, debt securities, or other assets as long as certain requirements are met as delineated in this act;

(11) Prohibits a family trust company from advertising its services to the public;

(12) Authorizes the secretary to examine or investigate a family trust company at any time the secretary deems necessary to determine if the family trust company engaged in a prohibited act under Section 362.1065 or 362.1080, RSMo; and, if a family trust company engaged in such an act, to determine whether any other applicable law was violated;

(13) Authorizes the secretary to examine the books and records of a foreign family trust company as necessary to determine if such trust company is in compliance with this act;

FISCAL DESCRIPTION (continued)

(14) Authorizes the secretary to establish, by rule, the requirements and records necessary to demonstrate conformity with the act by a family trust company and requires the family trust company to pay the costs associated with an examination or investigation within thirty days of receiving the request for payment or be subject to a late payment fee of up to \$100 per day. The secretary may levy an administrative fee of up to \$1,000 per day for each day payment is overdue if the family trust company is intentionally not paying the bill;

(15) Authorizes the secretary to issue and serve upon a family trust company or family trust company affiliated party a notice of charges and a notice of opportunity for a hearing if the secretary has reason to believe that such company, family trust company affiliated party, or individual named therein is engaging in or has engaged in any act that violates the rules and requirements of this act or any rule or order of the secretary, is a willful failure to provide information or documents to the secretary upon written request, is an act of commission or omission that is judicially determined by a court of competent jurisdiction to be a breach of trust or fiduciary duty, or is a violation of state or federal law related to anti-money laundering, customer identification, or any related rule or regulation; and

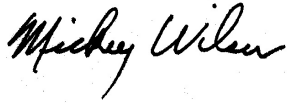
(16) Provides for a hearing process and, if the family trust company doesn't take corrective action, a cease and desist from operating as a family trust company order and an order from a circuit court for the annulment or dissolution of the company.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Department of Insurance, Financial Institutions and Professional Registration
Office of the Secretary of State
Office of the State Public Defender
Office of Prosecution Services
Office of the State Courts Administrator

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A handwritten signature in black ink that reads "Mickey Wilson". The signature is written in a cursive, flowing style.

Mickey Wilson, CPA
Director
February 24, 2017

Ross Strobe
Assistant Director
February 24, 2017