

HCS HB 291 -- MISSOURI FAMILY TRUST COMPANY ACT

SPONSOR: Crawford

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Financial Institutions by a vote of 12 to 1. Vote "Do Pass with HCS" by the Standing Committee on Rules-Legislative Oversight by a vote of 12 to 0.

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

- (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 pay a one-time original filing fee of \$5,000 and 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;

(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;

(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.

PROPOSERS: Supporters say that this bill will bring business to this state. Some of America's wealthiest and most prominent families use Family Trust Companies (FTCs). A few of the high net worth families in Missouri seek to have their assets maintained within their family unit in a FTC. Families with significant wealth and sophisticated advisors frequently seek to retain administrative and disposition control over their trusts but also wish to have the benefits of a trustee that cannot die or become incapacitated; continuity of management; direct access to professional staff; and multiple fiduciary support services under one roof.

This bill authorizes the creation and operation of FTCs in Missouri. A FTC would be a state-chartered financial institution which could be a corporation or a Limited Liability Company (LLC) to administer the FTC trusts and estates, but only for one family, as defined in the bill. The definition of family is set up in degrees of contiguity to determine who can be served under an FTC.

FTCs can't serve the general public, is not subject to periodic examinations, and can be capitalized with only \$250,000. The FTC will not be competing with traditional banks and credit unions. These are private trusts and can be operated by private staff.

Right now, these families are going elsewhere to create a FTC. FTCs are growing in popularity and are in 15 states. This bill is patterned after bills from Florida, Wyoming and Nevada. Due to favorable Missouri trust and income tax laws, this bill would serve as a powerful incentive for wealthy families from other states to establish their FTCs here and thereby promote economic growth in Missouri.

Testifying for the bill were Representative Crawford and Charles A. Redd, Missourians For Local Asset Governance.

OPPONENTS: There was no opposition voiced to the committee.