

SECOND REGULAR SESSION

HOUSE BILL NO. 2461

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BONDON.

5383H.011

DANA RADEMAN MILLER, Chief Clerk

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Section A. Sections 362.1015, 362.1030, 362.1037, 362.1040, and 362.1070, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 362.1015, 362.1030, 362.1037, 362.1040, and 362.1070, to read as follows: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

(5) "Engage in trust company 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 who is not a family

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.

17 member or any sole proprietorship, partnership, limited liability company, joint venture,
18 association, corporation, trust, estate, business trust, or other company that is not one hundred
19 percent owned by one or more family members;

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

22 (a) One or more family members; or

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

25 (7) "Family member":

26 (a) A designated relative;

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

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

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

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

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

35 (g) A family affiliate;

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

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

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

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44 For purposes of this subdivision, a legally adopted person shall be treated as a natural child of
45 the adoptive parents; a stepchild shall be treated as a natural child of the family member who is
46 or was the stepparent of that child; and a foster child or an individual who was a minor when a
47 family member became his or her legal guardian shall be treated as a natural child of the family
48 member appointed as foster parent or guardian. Degrees of kinship are calculated by adding the
49 number of steps from the designated relative through each person to the family member either
50 directly in case of lineal kinship or through the common ancestor in the case of collateral kinship;

51 (8) "Family trust company", a corporation or limited liability company organized or
52 qualified to do business in this state that is wholly owned and exclusively controlled by, directly

53 or indirectly, one or more family members, excluding any former spouse of a family member;
54 that operates for the exclusive benefit of a family member regardless of whether compensation
55 is received or anticipated; and that does not engage in trust company business with the general
56 public or otherwise hold itself out as a trustee for hire by advertisement, solicitation, or other
57 means. The term "family trust company" shall include foreign family trust companies unless
58 context indicates otherwise;

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

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

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

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

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

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

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

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

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

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

77 (12) "Officer", an individual, regardless of whether the individual has an official title or
78 receives a salary or other compensation, who may participate in the major policy-making
79 functions of a family trust company other than as a director. The term shall not include an
80 individual who may have an official title and exercises discretion in the performance of duties
81 and functions but who does not participate in determining the major policies of the family trust
82 company and whose decisions are limited by policy standards established by other officers,
83 regardless of whether the policy standards have been adopted by the board of directors. The
84 chair of the board of directors, the president, the chief executive officer, the chief financial
85 officer, the senior trust officer, all executive vice presidents of a family trust company, and all
86 managers if organized as a limited liability company are presumed to be officers unless such
87 officer is excluded, other than in the capacity of a director, by resolution of the board of directors
88 or members or by the bylaws or operating agreement of the family trust company from

89 participating in major policy-making functions of the family trust company, and such excluded
90 officer does not actually participate therein;

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

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

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

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

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

103 (18) "Reports of examinations, operations, or conditions", records submitted to the
104 secretary or prepared by the secretary as part of the secretary's duties performed under sections
105 362.1010 to 362.1117;

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

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

109 (21) "Working papers", the records of the procedures followed, tests performed,
110 information obtained, and conclusions reached in an investigation under sections 362.1010 to
111 362.1117. The term shall also include books and records.

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

11 2. ~~[No]~~ A family trust company **that is not a foreign family trust company** shall **not**
12 conduct business in this state unless such family trust company:

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

14 (2) Pays a one-time original filing fee of five thousand dollars to the secretary; and
15 (3) Registers **by filing** with the secretary **an initial registration application** in a format
16 prescribed by the secretary.

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

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

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

22 (3) **If such foreign family trust company is a corporation, files an application for**
23 **a certificate of authority or, if such foreign family trust company is a limited liability**
24 **company, files an application for registration.**

25 4. The secretary shall deposit all family trust company filing fees into the family trust
26 company fund established under subsection 1 of this section.

27 ~~[3. To register, a family trust company that is not a foreign family trust company shall~~
28 ~~file its organizational instrument with the secretary. At a minimum, the organizational~~
29 ~~instrument shall state:~~

30 ~~—— (1) The name of the designated relative;~~

31 ~~—— (2) That the family trust company is a family trust company as defined under sections~~
32 ~~362.1010 to 362.1117; and~~

33 ~~—— (3) That its operations will comply with sections 362.1010 to 362.1117.~~

34 ~~—— 4. A foreign family trust company shall register by filing with the secretary:~~

35 ~~—— (1) An initial registration to begin operations as a foreign family trust company; and~~

36 ~~—— (2) An application for a certificate of authority in accordance with and subject to chapters~~
37 ~~347 or 351.]~~

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

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

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

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

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

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

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

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

- 50 (3) The name and current street address in this state of its registered agent;
- 51 (4) A certified copy of a certificate of good standing, or an equivalent document,
- 52 authenticated by the official having custody of records in the jurisdiction where the foreign
- 53 family trust company is incorporated or organized;
- 54 (5) Satisfactory proof, as determined by the secretary, that the foreign family trust
- 55 company is organized in a manner similar to a Missouri family trust company and is in
- 56 compliance with the family trust company laws and regulations of the jurisdiction in which the
- 57 foreign family trust company was incorporated or organized; and
- 58 (6) Any other information reasonably and customarily required by the secretary of
- 59 foreign corporations or foreign limited liability companies seeking to qualify to conduct business
- 60 in this state.

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

- 2 (1) If a corporation, a board of directors that consists of at least three directors; or
- 3 (2) If a limited liability company, a board of directors or managers that consists of **at**
- 4 **least** three directors or managers.

5

6 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 instrument in

2 writing for the purpose of forming a family trust company, subject to the conditions prescribed

3 by law.

4 2. The organizational instrument of a family trust company shall set forth all of the

5 information required under ~~[chapters]~~ **chapter** 347 or 351, as applicable, and the following:

6 (1) The name of the company, which shall distinguish the company from any other

7 nonfamily trust company or family trust company formed or engaging in business in this state.

8 If the word "trust" is included in the name, it shall be immediately preceded by the word "family"

9 so as to distinguish the entity from a nonfamily trust company operating under this chapter. This

10 subdivision shall not apply to a foreign family trust company using a fictitious name that is

11 registered and maintained in this state pursuant to the requirements administered by the secretary

12 and that distinguishes the foreign family trust company from a nonfamily trust company

13 authorized to operate under this chapter;

14 (2) **A statement that** the purpose for which the company is formed~~[, which shall clearly~~

15 ~~identify the restricted activities permissible to a family trust company]~~ **is to engage in any and**

16 **all activities permitted** under sections 362.1010 to 362.1117; and

17 (3) A statement affirming that the family trust company shall not engage in trust

18 company business with the general public.

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

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

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

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

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

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

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

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

19 (a) The family trust company;

20 (b) A family affiliate; or

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

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

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

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

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

32 (3) The family trust company discloses its intent to exercise the authority granted under
33 subsection 4 of this section in writing to all [of the trust company's account statement recipients]

34 **family members for whom the investment is to be made, which shall occur** before the first
35 exercise of such authority, and each such disclosure states:

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

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

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

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

46 (1) Is negotiated at a fair price;

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

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

51 (b) The purposes of the trust; and

52 (3) Otherwise complies with:

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

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

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

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

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

62 ~~———(b)]~~ A court order;

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

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

67 ~~———(d) The written consent of every adult qualified beneficiary of such trust who, at the time~~
68 ~~of such purchase, is entitled to receive income under the trust or who would be entitled to receive~~

69 ~~a distribution of principal if the trust were terminated]~~ **or of every adult qualified beneficiary**
70 **of the trust created under that instrument for which such purchase is made; and**

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

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

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

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

82 (3) Enter into an agreement with a family member who is the settlor or a qualified
83 beneficiary of a trust with respect to the appointment of the family trust company as a fiduciary
84 of the trust or with respect to the compensation of the family trust company for service as a
85 fiduciary;

86 (4) Transact business with a family member;

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

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

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

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

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

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