

SECOND REGULAR SESSION

# HOUSE BILL NO. 2798

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE O'DONNELL.

5840H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 362.1010, 362.1015, 362.1030, 362.1035, 362.1040, 362.1055, 362.1060, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105, 362.1110, 362.1115, 362.1116, and 362.1117, RSMo, and to enact in lieu thereof sixteen new sections relating to family trust companies, with penalty provisions.

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

Section A. Sections 362.1010, 362.1015, 362.1030, 362.1035, 362.1040, 362.1055, 2 362.1060, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105, 362.1110, 362.1115, 3 362.1116, and 362.1117, RSMo, are repealed and sixteen new sections enacted in lieu 4 thereof, to be known as sections 362.1010, 362.1015, 362.1030, 362.1035, 362.1040, 5 362.1055, 362.1060, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105, 362.1110, 6 362.1115, 362.1116, and 362.1117, to read as follows:

362.1010. Sections 362.1010 to ~~362.1115~~ **362.1117** shall be known and may be 2 cited as the "Missouri Family Trust Company Act".

362.1015. For purposes of sections 362.1010 to ~~362.1115~~ **362.1117**, the following 2 terms mean:

3 (1) "Authorized representative", if a family trust company is organized as a 4 corporation, then an officer or director of the family trust company or, if a family trust 5 company is organized as a limited liability company, then a manager, officer, or member of 6 the family trust company;

7 (2) "Collateral kinship", a relationship that is not lineal but stems from a common 8 ancestor;

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.

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

12 (4) "Designated relative", a common ancestor of a family, either living or deceased,  
13 who is so designated in a family trust company's initial registration application and any  
14 annual registration report;

15 (5) **"Director", the director of the Missouri division of finance;**

16 (6) **"Director's designee", an attorney-at-law or a certified public accountant  
17 designated by the director under subsection 1 of section 362.1085;**

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

24 ~~[(6)]~~ (8) "Family affiliate", a company or other entity wholly and exclusively owned  
25 by, directly or indirectly, and operated for the sole benefit of:

26 (a) One or more family members; or

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

29 ~~[(7)]~~ (9) "Family member":

30 (a) A designated relative;

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

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

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

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

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

39 (g) A family affiliate;

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

44 (i) An irrevocable trust of which one or more family members are the only  
45 permissible distributees; or

46 (j) A revocable trust of which one or more family members are the sole settlors.  
47

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

56 ~~[(8)]~~ (10) "Family trust company", a corporation or limited liability company  
57 organized or qualified to do business in this state that is wholly owned and exclusively  
58 controlled by, directly or indirectly, one or more family members, excluding any former  
59 spouse of a family member; that operates for the exclusive benefit of a family member  
60 regardless of whether compensation is received or anticipated; and that does not engage in  
61 trust company business with the general public or otherwise hold itself out as a trustee for hire  
62 by advertisement, solicitation, or other means. The term "family trust company" shall include  
63 foreign family trust companies unless context indicates otherwise;

64 ~~[(9)]~~ (11) "Family trust company affiliated party":

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

67 (b) A stockholder, member, or any other person as determined by the ~~[secretary]~~  
68 **director** who participates in the affairs of a family trust company;

69 ~~[(10)]~~ (12) "Foreign family trust company", a family trust company that:

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

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

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

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

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

80 ~~[(11)]~~ (13) "Lineal kinship", a relationship in the direct line of ascent or descent from  
81 a designated relative;

82           ~~[(12)]~~ **(14)** "Officer", an individual, regardless of whether the individual has an  
 83 official title or receives a salary or other compensation, who may participate in the major  
 84 policy-making functions of a family trust company other than as a director. The term shall  
 85 not include an individual who may have an official title and exercises discretion in the  
 86 performance of duties and functions but who does not participate in determining the major  
 87 policies of the family trust company and whose decisions are limited by policy standards  
 88 established by other officers, regardless of whether the policy standards have been adopted by  
 89 the board of directors. The chair of the board of directors, the president, the chief executive  
 90 officer, the chief financial officer, the senior trust officer, all executive vice presidents of a  
 91 family trust company, and all managers if organized as a limited liability company are  
 92 presumed to be officers unless such officer is excluded, other than in the capacity of a  
 93 director, by resolution of the board of directors or members or by the bylaws or operating  
 94 agreement of the family trust company from participating in major policy-making functions  
 95 of the family trust company, and such excluded officer does not actually participate therein;

96           ~~[(13)]~~ **(15)** "Organizational instrument", the articles of incorporation for a corporation  
 97 or the articles of organization for a limited liability company, as they may be amended or  
 98 supplemented from time to time;

99           ~~[(14)]~~ **(16)** "Principal place of business", the physical location where officers of a  
 100 family trust company direct, control, and coordinate the trust company's activities;

101           ~~[(15)]~~ **(17)** "Principal place of operations", the physical location in this state where a  
 102 foreign family trust company stores and maintains its books and records pertaining to  
 103 operations in this state;

104           ~~[(16)]~~ **(18)** "Qualified beneficiary", the same meaning as defined under subdivision  
 105 (21) of section 456.1-103;

106           ~~[(17)]~~ **(19)** "Registered agent", a business or individual designated by a family trust  
 107 company to receive service of process on behalf of the family trust company;

108           ~~[(18)]~~ **(20)** "Reports of examinations, operations, or conditions", records submitted to  
 109 the ~~[secretary]~~ **director** or prepared by the ~~[secretary]~~ **director** as part of the ~~[secretary's]~~  
 110 **director's** duties performed under sections 362.1010 to 362.1117;

111           ~~[(19)]~~ "Secretary", ~~the secretary of state for the state of Missouri;~~

112           ~~[(20)]~~ "Secretary's designee", ~~an attorney at law or a certified public accountant~~  
 113 ~~designated by the secretary under subsection 1 of section 362.1085;~~

114           (21) "Working papers", the records of the procedures followed, tests performed,  
 115 information obtained, and conclusions reached in an investigation under sections 362.1010 to  
 116 362.1117. 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]~~ **director** from

3 family trust companies registering as provided in this section. The state treasurer shall be  
4 custodian of the fund. In accordance with sections 30.170 and 30.180, the state treasurer may  
5 approve disbursements. The fund shall be a dedicated fund, and moneys in the fund shall be  
6 used solely to support the ~~[secretary's]~~ **director's** role and fulfillment of duties under sections  
7 362.1010 to 362.1117. Notwithstanding the provisions of section 33.080 to the contrary, any  
8 moneys remaining in the fund at the end of the biennium that exceed twenty thousand dollars  
9 shall revert to the credit of the general revenue fund. The state treasurer shall invest moneys  
10 in the fund in the same manner as other funds are invested. Any interest and moneys earned  
11 on such investments shall be credited to the fund.

12 2. A family trust company that is not a foreign family trust company shall not conduct  
13 business in this state unless such family trust company:

14 (1) ~~[Files its organizational instrument with the secretary]~~ **Files with the director, an**  
15 **initial registration application in a format prescribed by the director, a one-time original**  
16 **filing fee of five thousand dollars, the proposed organizational instruments to be filed**  
17 **with the secretary of state, and all required filing fees; and**

18 (2) ~~[Pays a one-time original filing fee of five thousand dollars to the secretary]~~  
19 **Receives from the director an order approving the application, instruction as to who**  
20 **shall file the order, the proposed organizational instruments and all required filing fees**  
21 **with the secretary of state**~~]; and~~

22 (3) ~~[Registers by filing with the secretary an initial registration application in a format~~  
23 ~~prescribed by the secretary].~~

24

25 **A family trust company that is not a foreign family trust company that is, as of August**  
26 **28, 2024, a registered family trust company in good standing with the secretary of state**  
27 **shall be deemed to have complied with the requirements of subsection 2 of section**  
28 **362.1030.**

29 3. A foreign family trust company shall not conduct business in this state unless such  
30 foreign family trust company:

31 (1) ~~[Pays a one-time original filing fee of five thousand dollars to the secretary]~~ **Files**  
32 **with the director, an initial registration application in a format prescribed by the**  
33 **director, a one-time original filing fee of five thousand dollars, the proposed application**  
34 **for a certificate of authority if a corporation or application for registration if a limited**  
35 **liability company to be filed with the secretary of state, and all required filing fees; and**

36 (2) ~~[Registers by filing with the secretary an initial registration application in a format~~  
37 ~~prescribed by the secretary]~~ **Receives from the director an order approving the**  
38 **application, instruction as to who shall file the order, the proposed application for a**

39 **certificate of authority if a corporation, or application for registration if a limited**  
40 **liability company, to be filed with the secretary of state and all required filing fees[; and**

41 ~~(3) If such foreign family trust company is a corporation, files an application for a~~  
42 ~~certificate of authority or, if such foreign family trust company is a limited liability company,~~  
43 ~~files an application for registration].~~

44

45 **A foreign family trust company that is, as of August 28, 2024, a registered family trust**  
46 **company in good standing with the secretary of state shall be deemed to have complied**  
47 **with the requirements of subsection 3 of section 362.1030.**

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

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

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

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

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

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

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

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

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

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

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

66 (5) Satisfactory proof, as determined by the ~~[secretary]~~ **director**, that the foreign  
67 family trust company is organized in a manner similar to a Missouri family trust company and  
68 is in compliance with the family trust company laws and regulations of the jurisdiction in  
69 which the foreign family trust company was incorporated or organized; and

70 (6) Any other information reasonably ~~[and customarily]~~ required by the ~~[secretary of~~  
71 ~~foreign corporations or foreign limited liability companies seeking to qualify to conduct~~  
72 ~~business in this state]~~ **director**.

362.1035. 1. No family trust company shall be organized or operated with a capital  
2 account of less than two hundred fifty thousand dollars. The full amount of the initial capital

3 account of a family trust company shall consist of one or more asset groups described under  
4 subsection 1 of section 362.1070, exclusive of all organization expenses.

5 2. A family trust company shall maintain:

6 (1) A physical office in this state where original or true copies, including electronic  
7 copies, of all material business records and accounts of the family trust company may be  
8 accessed and are readily available for examination by the ~~secretary~~ **director**. A family trust  
9 company may also maintain one or more branch offices within or outside of this state;

10 (2) A registered agent who maintains an office in this state;

11 (3) All applicable state and local business licenses, charters, and permits; and

12 (4) A deposit account with a state-chartered or national financial institution that has a  
13 principal or branch office in this state.

14 3. In addition to the requirements of subsection 2 of this section, a foreign family trust  
15 company shall also:

16 (1) Be in good standing in the jurisdiction in which it is incorporated or organized;  
17 and

18 (2) Stay in compliance with the family trust company laws and regulations of such  
19 jurisdiction.

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  
3 prescribed by law.

4 2. The organizational instrument of a family trust company shall set forth all of the  
5 information required under 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  
8 state. If the word "trust" is included in the name, it shall be immediately preceded by the  
9 word "family" so as to distinguish the entity from a nonfamily trust company operating under  
10 this chapter. This subdivision shall not apply to a foreign family trust company using a  
11 fictitious name that is registered and maintained in this state pursuant to the requirements  
12 administered by the secretary **of state** and that distinguishes the foreign family trust company  
13 from a nonfamily trust company authorized to operate under this chapter;

14 (2) A statement that the purpose for which the company is formed is to engage in any  
15 and all activities permitted under sections 362.1010 to 362.1117; and

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

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

362.1055. 1. A family trust company shall file an annual registration report with, and  
2 shall pay an annual filing fee of one thousand dollars to, the ~~[secretary]~~ **director**.

3 2. The annual registration report filed by a family trust company that is not a foreign  
4 family trust company shall include:

5 (1) A statement by an authorized representative verifying that the family trust  
6 company is in compliance with the provisions of sections 362.1010 to 362.1117 and with  
7 applicable federal laws including, but not limited to, anti-money laundering and customer-  
8 identification rules or regulations;

9 (2) The name of the company's designated relative and the street address for its  
10 principal place of business; and

11 (3) Any other information reasonably ~~[and customarily]~~ required by the ~~[secretary of~~  
12 ~~general business corporations in connection with filing their annual registration reports]~~  
13 **director**.

14 3. The annual registration report filed by a foreign family trust company shall  
15 include:

16 (1) A statement by an authorized representative verifying that the foreign family trust  
17 company is in compliance with the provisions of sections 362.1010 to 362.1117, with the  
18 family trust company laws and regulations of the jurisdiction in which it was incorporated or  
19 organized, and with applicable federal laws including, but not limited to, anti-money  
20 laundering and customer-identification rules or regulations;

21 (2) The current telephone number and street address of the foreign family trust  
22 company's principal place of business in the jurisdiction in which it was incorporated or  
23 organized;

24 (3) The current telephone number and street address of the foreign family trust  
25 company's principal place of operations;

26 (4) The current telephone number and address of the physical location of any other  
27 offices located in this state;

28 (5) The name and current street address in this state of the trust company's registered  
29 agent;

30 (6) Documentation, to the satisfaction of the ~~[secretary]~~ **director**, showing that the  
31 foreign family trust company is in compliance with the family trust company laws and  
32 regulations of the jurisdiction in which it was incorporated or organized; and

33 (7) Any other information reasonably ~~[and customarily]~~ required by the ~~[secretary of~~  
34 ~~general business corporations in connection with filing their annual registration reports]~~  
35 **director**.

36 4. An annual registration report shall be submitted on a form prescribed by the  
37 ~~[secretary]~~ **director** and signed under penalty of perjury by an authorized representative.



362.1060. 1. A family trust company may, but only for family members:

2 (1) Act as a sole or copersonal representative, executor, or administrator for a probate  
3 estate within or outside this state;

4 (2) Act as an attorney-in-fact or agent under a power of attorney;

5 (3) Except as provided under section 362.1065, act within or outside this state as a  
6 sole fiduciary or cofiduciary, including acting as a trustee, advisory agent, assignee, assignee  
7 for the benefit of creditors, authenticating agent, bailee, bond or indenture trustee,  
8 conservator, conversion agent, custodian, escrow agent, fiscal or paying agent, financial  
9 advisor, guardian, investment advisor or manager, managing agent, purchase agent, receiver,  
10 registrar, safekeeping or subscription agent, transfer agent for entities other than public  
11 companies, warrant agent, or other similar capacity generally performed by a corporate  
12 trustee. In so acting, the family trust company may possess, purchase, sell, invest, reinvest,  
13 safekeep, or otherwise manage or administer the real or personal property of family members;

14 (4) Exercise the powers of a corporation or limited liability company incorporated or  
15 organized under the laws of this state, or qualified to transact business as a foreign  
16 corporation or limited liability company under the laws of this state that are reasonably  
17 necessary to enable the trust company to fully exercise a power conferred under sections  
18 362.1010 to 362.1117 in accordance with commonly accepted customs and usages;

19 (5) Delegate duties and powers, including investment and management functions  
20 under section 469.909, in accordance with the powers granted to a trustee under chapter 456  
21 or other applicable law and retain agents, attorneys, accountants, investment advisors, or  
22 other individuals or entities to advise or assist the family trust company in the exercise of its  
23 powers and duties under sections 362.1010 to 362.1117 and chapter 456. Such exercise of  
24 power may include, but is not limited to, retaining a bank trust department or a public trust  
25 company other than another family trust company; and

26 (6) Perform all acts necessary to exercise the powers enumerated in this section or  
27 authorized under sections 362.1010 to 362.1117 and other applicable laws of this state.

28 2. A foreign family trust company **that has complied with section 362.1030 and is**  
29 in good standing in the jurisdiction in which it is incorporated or organized may exercise all  
30 the trust powers in this state that a Missouri family trust company may exercise.

362.1085. 1. The ~~[secretary]~~ **director** may designate an attorney-at-law or a certified  
2 public accountant to examine or investigate, or assist in the examination of, a family trust  
3 company.

4 2. The ~~[secretary]~~ **director** or the ~~[secretary's]~~ **director's** designee may examine or  
5 investigate a family trust company at any time the ~~[secretary]~~ **director** deems necessary to  
6 determine if the family trust company engaged in an act prohibited under section 362.1065 or

7 362.1080 and, if a family trust company engaged in such act, to determine whether any other  
8 applicable law was violated.

9         3. The **[secretary] director** or the **[secretary's] director's** designee may examine the  
10 books and records of a foreign family trust company at any time the **[secretary] director**  
11 deems necessary to determine if such foreign family trust company is in compliance with  
12 sections 362.1010 to 362.1117. In connection with an examination of the books and records  
13 of the trust company, the **[secretary] director** or the **[secretary's] director's** designee may rely  
14 upon the most recent examination report, review, certification letters, or similar  
15 documentation issued by the agency supervising the foreign family trust company in the  
16 jurisdiction in which the foreign family trust company is incorporated or organized. The  
17 examination by the **[secretary] director** or the **[secretary's] director's** designee of the books  
18 and records of a foreign family trust company shall be, to the extent practicable, limited to  
19 books and records of operations in this state.

20         4. For each examination or investigation of a family trust company under this section,  
21 the family trust company shall pay the costs of the examination or investigation. As used in  
22 this subsection, the term "costs" means the salary of and travel expenses incurred by any  
23 individual that are directly attributable to the examination or investigation of the family trust  
24 company. The mailing of payment for costs incurred shall be postmarked within thirty days  
25 after the receipt of a notice that states the costs are due. The **[secretary] director** may levy a  
26 late payment of up to one hundred dollars per day for each day that a payment is overdue  
27 unless waived for good cause. However, if the late payment of costs is intentional, the  
28 **[secretary] director** may levy an administrative fine of up to one thousand dollars per day for  
29 each day the payment is overdue.

30         5. The **[secretary] director** may establish by rule the requirements and records  
31 necessary to demonstrate conformity with sections 362.1010 to 362.1117 by a family trust  
32 company.

362.1090. 1. The **[secretary] director** or the **[secretary's] director's** designee may  
2 issue and serve upon a family trust company or family trust company affiliated party a notice  
3 of charges if the **[secretary] director** or the **[secretary's] director's** designee has reason to  
4 believe that such company, family trust company affiliated party, or individual named therein  
5 is engaging in or has engaged in any of the following acts:

- 6         (1) The family trust company fails to satisfy the requirements of a family trust  
7 company or foreign family trust company under sections 362.1010 to 362.1117;
- 8         (2) A violation of section 362.1035, 362.1040, 362.1050, 362.1055, 362.1060, or  
9 362.1080;
- 10         (3) A violation of any rule of the **[secretary] director**;
- 11         (4) A violation of any order of the **[secretary] director**;

- 12 (5) A breach of any written agreement with the **[secretary] director**;
- 13 (6) A prohibited act or practice under section 362.1065;
- 14 (7) A willful failure to provide information or documents to the **[secretary] director**  
15 upon written request;
- 16 (8) An act of commission or omission that is judicially determined by a court of  
17 competent jurisdiction to be a breach of trust or fiduciary duty; or
- 18 (9) A violation of state or federal law related to anti-money laundering, customer  
19 identification, or any related rule or regulation.
- 20 2. The notice of charges shall contain a statement of facts and notice of opportunity  
21 for a hearing.
- 22 3. If no hearing is requested within thirty days after the date of service of the notice of  
23 charges or if a hearing is held and the **[secretary] director** or **[secretary's] director's** designee  
24 finds that any of the charges are true, the **[secretary] director** or **[secretary's] director's**  
25 designee may enter an order directing the family trust company, family trust company  
26 affiliated party, or the individual named in the notice of charges to cease and desist such  
27 conduct and to take corrective action.
- 28 4. A contested or default cease and desist order is effective when reduced to writing  
29 and served upon the family trust company, family trust company affiliated party, or the  
30 individual named therein. An uncontested cease and desist order is effective as agreed.
- 31 5. If the **[secretary] director** or the **[secretary's] director's** designee finds that  
32 conduct described under subsection 1 of this section is likely to cause substantial prejudice to  
33 members, shareholders, beneficiaries of fiduciary accounts of the family trust company, or  
34 beneficiaries of services rendered by the family trust company, the **[secretary] director** or the  
35 **[secretary's] director's** designee may issue an emergency cease and desist order requiring the  
36 family trust company, family trust company affiliated party, or individual named therein to  
37 immediately cease and desist from engaging in the conduct stated and to take corrective  
38 action. The emergency order is effective immediately upon service of a copy of the order  
39 upon the family trust company or family trust company affiliated party and shall remain  
40 effective for ninety days. If the **[secretary] director** or the **[secretary's] director's** designee  
41 begins nonemergency cease and desist proceedings under subsection 1 of this section, the  
42 emergency order shall remain effective until the conclusion of the proceedings under this  
43 section.
- 44 6. A family trust company shall have ninety days to wind up its affairs after entry of  
45 any order to cease and desist from operating as a family trust company. If a family trust  
46 company that is not a foreign family trust company is still operating after ninety days, the  
47 **[secretary] director** or the **[secretary's] director's** designee may seek an order from a circuit  
48 court for the annulment or dissolution of the company. If a foreign family trust company is

49 still operating after ninety days, the **[secretary] director** or the **[secretary's] director's**  
50 designee may seek an injunction from a circuit court restraining the company from continuing  
51 to operate in this state.

362.1095. If a family trust company fails to submit within the prescribed period its  
2 annual registration report or any other report required by sections 362.1010 to 362.1117 or  
3 rule, the **[secretary] director** may impose a fine of up to one hundred dollars for each day that  
4 the annual registration report or other report is overdue. Failure to provide the annual  
5 registration report within sixty days after the end of the calendar year shall automatically  
6 result in termination of the registration of a family trust company. A family trust company  
7 may have its registration automatically reinstated by submitting to the **[secretary] director**, on  
8 or before August thirty-first of the calendar year in which the annual registration report is due,  
9 the company's annual registration report, a five hundred dollar late fee, and the amount of any  
10 fine imposed by the **[secretary] director** under this section. A family trust company that fails  
11 to renew or reinstate its registration shall wind up its affairs on or before November thirtieth  
12 of the calendar year in which such failure occurs.

362.1100. 1. The **[secretary] director** or the **[secretary's] director's** designee may  
2 issue and serve upon a family trust company and a family trust company affiliated party a  
3 notice of charges if the **[secretary] director** or the **[secretary's] director's** designee has reason  
4 to believe that the family trust company affiliated party is engaging or has engaged in conduct  
5 that:

- 6 (1) Demonstrates that the family trust (1) company does not satisfy the requirements of a  
7 family trust company or of a foreign family trust company under sections 362.1010 to  
8 362.1117;
- 9 (2) Is a prohibited act or practice under section 362.1065;
- 10 (3) Violates section 362.1035, 362.1040, 362.1050, 362.1055, 362.1060, or 362.1080;
- 11 (4) Violates any other law involving fraud or moral turpitude that constitutes a felony;
- 12 (5) Violates a state or federal law related to anti-money laundering, customer  
13 identification, or any related rule or regulation;
- 14 (6) Is a willful violation of a rule of the **[secretary] director**;
- 15 (7) Is a willful violation of an order of the **[secretary] director**;
- 16 (8) Is a willful breach of a written agreement with the **[secretary] director**; or
- 17 (9) Is an act of commission or omission or a practice that the **[secretary] director** or  
18 the **[secretary's] director's** designee has reason to believe is a breach of trust or fiduciary  
19 duty.

20 2. The notice of charges shall contain a statement of facts and notice of opportunity  
21 for a hearing.

22           3. If no hearing is requested within thirty days after the date of service of the notice of  
23 charges or if a hearing is held and the ~~[secretary]~~ **director** or ~~[secretary's]~~ **director's** designee  
24 finds that any of the charges in the notice of charges are true, the ~~[secretary]~~ **director** or  
25 ~~[secretary's]~~ **director's** designee may enter an order that removes the family trust company  
26 affiliated party from the family trust company or that restricts or prohibits the family trust  
27 company affiliated party from participating in the affairs of the family trust company.

28           4. A contested or default order of removal is effective when reduced to writing and  
29 served upon the family trust company and the family trust company affiliated party. An  
30 uncontested order of removal is effective as agreed.

31           5. (1) The chief executive officer of a family trust company or the person holding the  
32 equivalent office shall promptly notify the ~~[secretary]~~ **director** if such person has actual  
33 knowledge that a family trust company affiliated party is charged with a felony in a state or  
34 federal court.

35           (2) If a family trust company affiliated party is charged with a felony in a state or  
36 federal court or, in a court of a foreign country with which the United States maintains  
37 diplomatic relations, is charged with an offense that involves a violation of law relating to  
38 fraud, currency transaction reporting, money laundering, theft, or moral turpitude and such  
39 offense is equivalent to a felony charge under state or federal law, then the ~~[secretary]~~  
40 **director** or the ~~[secretary's]~~ **director's** designee may enter an emergency order that suspends  
41 the family trust company affiliated party or that restricts or prohibits participation by such  
42 party in the affairs of the family trust company effective upon service of the order on the  
43 company and such family trust company affiliated party.

44           (3) The order shall contain notice of opportunity for a hearing, at which the family  
45 trust company affiliated party may request a postsuspension hearing to show that continued  
46 service to or participation in the affairs of the family trust company does not pose a threat to  
47 the interests of the family trust company. In accordance with applicable rules, the ~~[secretary]~~  
48 **director** or ~~[secretary's]~~ **director's** designee shall notify the family trust company affiliated  
49 party whether the order suspending or prohibiting the family trust company affiliated party  
50 from participating in the affairs of the family trust company will be rescinded or otherwise  
51 modified. The emergency order shall remain in effect, unless otherwise modified by the  
52 ~~[secretary]~~ **director** or ~~[secretary's]~~ **director's** designee, until the criminal charge is disposed.  
53 The emergency order shall dissolve upon the final, unappealed dismissal of all charges  
54 against or the acquittal of the family trust company affiliated party. Such occurrences shall  
55 not prohibit the ~~[secretary]~~ **director** or the ~~[secretary's]~~ **director's** designee from instituting  
56 proceedings under subsection 1 of this section. If the family trust company affiliated party  
57 charged is convicted or pleads guilty or nolo contendere, regardless of adjudication, the  
58 emergency order shall become final.

59           6. No family trust company affiliated party removed from office under this section  
60 shall be eligible for reinstatement to such office or to any other official position in a family  
61 trust company or financial institution in this state except with the written consent of the  
62 ~~[secretary]~~ **director**. A family trust company affiliated party who is removed, restricted, or  
63 prohibited from participation in the affairs of a family trust company under this section may  
64 petition the ~~[secretary]~~ **director** for modification or termination of such removal, restriction,  
65 or prohibition.

66           7. The resignation, termination of employment or participation, or separation from a  
67 family trust company of the family trust company affiliated party shall not affect the  
68 jurisdiction and authority of the ~~[secretary]~~ **director** or the ~~[secretary's]~~ **director's** designee to  
69 issue a notice and proceed under this section against the family trust company affiliated party  
70 if such notice is served within six years of the date such person ceased to be a family trust  
71 company affiliated party.

362.1105. 1. The books and records of a family trust company are confidential and  
2 shall be made available for inspection and examination only:

3           (1) To the ~~[secretary]~~ **director** or the ~~[secretary's]~~ **director's** authorized  
4 representative;

5           (2) To any person authorized to act for the family trust company;

6           (3) As compelled by a court, pursuant to a subpoena issued in accordance with state  
7 or federal law. Before the production of the books and records, the party seeking production  
8 shall agree to reimburse the company for the reasonable costs and fees incurred in compliance  
9 with the production. If the parties disagree on the amount of reimbursement, the party  
10 seeking the records may request the court that issued the subpoena to set the amount of  
11 reimbursement;

12           (4) Pursuant to a subpoena held by any federal or state law enforcement or  
13 prosecutorial instrumentality authorized to investigate suspected criminal activity;

14           (5) As authorized by, if a corporation, the board of directors or, if a limited liability  
15 company, the managers; or

16           (6) As provided under subsection 2 of this section.

17           2. (1) If a corporation, each customer and stockholder, or if a limited liability  
18 company, each member has the right to inspect the books and records of a family trust  
19 company as they pertain to such person's accounts or the determination of such person's  
20 voting rights.

21           (2) The books and records pertaining to customers, members, and stockholders of a  
22 family trust company shall be kept confidential by the company and its directors, managers,  
23 officers, and employees. The books and records of customers, members, and stockholders  
24 shall not be released except upon the express authorization of the customer as to his or her

25 own accounts or a stockholder or member regarding his or her voting rights. However,  
26 information may be released without the authorization of a customer, member, or shareholder  
27 in a manner prescribed by the board of directors of a corporation or managers of a limited  
28 liability company for the purposes of verifying or corroborating the existence or amount of a  
29 customer's account if such information is reasonably provided to meet the needs of commerce  
30 and to ensure accurate credit information. Notwithstanding this subdivision, this subsection  
31 shall not prohibit a family trust company from disclosing financial information as permitted  
32 under 15 U.S.C. Section 6802, as amended.

33 (3) The willful unlawful disclosure of confidential information in violation of this  
34 section shall be a class E felony.

35 (4) This subsection shall not apply to a foreign family trust company. The laws of the  
36 jurisdiction in which a foreign family trust company was incorporated or organized govern  
37 the rights of its customers, members, and stockholders to inspect its books and records.

38 3. For purposes of this section, the term "books and records" shall include, but is not  
39 limited to, the initial registration documents of a family trust company under section  
40 362.1030 and the annual registration report made by a family trust company under section  
41 362.1055.

362.1110. 1. A family trust company shall keep at its principal place of business or  
2 principal place of operations:

3 (1) Full and complete records of the names and residences of all its shareholders or  
4 members;

5 (2) The number of shares or membership units held by each, as applicable; and

6 (3) The ownership percentage of each shareholder or member.

7

8 The records are subject to inspection by all shareholders or members of the family trust  
9 company and the **[secretary] director** or the **[secretary's] director's** authorized representative  
10 during the normal business hours of the family trust company. A current list of shareholders  
11 or members shall be made available to the **[secretary] director** or the **[secretary's] director's**  
12 authorized representative for their inspection and, upon the request of the **[secretary]**  
13 **director**, shall be submitted to the **[secretary] director**.

14 2. The **[secretary] director** shall retain for at least ten years:

15 (1) Examination reports;

16 (2) Investigatory records;

17 (3) The organizational instrument of a family trust company; and

18 (4) The annual registration reports filed by a family trust company.

19 3. A copy of any document on file with the **[secretary] director** that is certified by the  
20 **[secretary] director** as a true copy may be introduced in evidence as if it were the original.

21 The [secretary] **director** shall establish a schedule of fees for preparing true copies of  
22 documents.

23 4. Orders issued by courts or administrative law judges for the production of  
24 confidential records or information shall provide for inspection in camera by the court or the  
25 administrative law judge. If the court or administrative law judge determines that the  
26 documents requested are relevant or would likely lead to the discovery of admissible  
27 evidence, the documents shall be subject to further orders by the court or the administrative  
28 law judge to protect the confidentiality thereof. An order directing the release of information  
29 shall be immediately reviewable, and a petition by the [secretary] **director** for review of the  
30 order shall automatically stay any further proceedings in a trial court or administrative  
31 hearing until the disposition of the petition by the reviewing court. If any other party files a  
32 petition for review, such filing shall stay proceedings only upon an order of the reviewing  
33 court.

362.1115. 1. The following information held by the [secretary] **director** is  
2 confidential and exempt from chapter 610:

3 (1) Any personal identifying information appearing in records relating to a  
4 registration or an annual certification of a family trust company;

5 (2) Any personal identifying information appearing in records relating to an  
6 examination of a family trust company;

7 (3) Any personal identifying information appearing in reports of examinations,  
8 operations, or conditions of a family trust company, including working papers;

9 (4) Any portion of a list of names of the shareholders or members of a family trust  
10 company;

11 (5) Information received by the [secretary] **director** from a person from another state  
12 or nation or the federal government that is otherwise confidential or exempt under the laws of  
13 such state or nation or under federal law; and

14 (6) An emergency cease and desist order issued under section 362.1090 until the  
15 emergency order is made permanent, unless the [secretary] **director** finds that such  
16 confidentiality will result in substantial risk of financial loss to the public.

17 2. Information made confidential and exempt under subsection 1 of this section may  
18 be disclosed by the [secretary] **director** to:

19 (1) The authorized representative or representatives of the family trust company  
20 under examination. The authorized representative or representatives shall be identified in a  
21 resolution or by written consent of the board of directors if a corporation or the managers if a  
22 limited liability company;

23 (2) A fidelity insurance company upon written consent of the family trust company's  
24 board of directors if a corporation or its managers if a limited liability company;



25 (3) An independent auditor upon written consent of the family trust company's board  
26 of directors if a corporation or its managers if a limited liability company;

27 (4) A liquidator, receiver, or conservator if appointed. However, any portion of the  
28 information that discloses the identity of a bondholder, customer, family member, member, or  
29 stockholder shall be redacted by the ~~[secretary]~~ **director** before releasing such information;

30 (5) Any other state, federal, or foreign agency responsible for the regulation or  
31 supervision of family trust companies;

32 (6) A law enforcement agency in the furtherance of such agency's official duties and  
33 responsibilities;

34 (7) The appropriate law enforcement or prosecutorial agency for the purpose of  
35 reporting any suspected criminal activity; or

36 (8) Comply with a legislative subpoena. A legislative body or committee that  
37 receives records or information pursuant to such subpoena shall maintain the confidential  
38 status of such records or information. However, in a case involving the investigation of  
39 charges against a public official subject to impeachment or removal, records or information  
40 may be disclosed to the extent necessary as determined by the legislative body or committee.

41 3. This section shall not prevent or restrict the publication of:

42 (1) A report required by federal law; or

43 (2) The name of the family trust company and the address of its registered agent.

44 4. The willful disclosure of information made confidential and exempt by this section  
45 is a class E felony.

362.1116. The ~~[secretary]~~ **director** may issue forms and orders and, after notice and  
2 comment, may adopt and amend rules necessary or appropriate to carry out the provisions of  
3 sections 362.1010 to 362.1117 and may repeal rules and forms.

362.1117. 1. Except as otherwise provided in sections 362.1010 to 362.1117, any  
2 interested person aggrieved by any order of the ~~[secretary]~~ **director** or ~~[secretary's]~~ **director's**  
3 designee under any provision of sections 362.1010 to 362.1117 shall be entitled to a hearing  
4 before the ~~[secretary]~~ **director** or the ~~[secretary's]~~ **director's** authorized representative in  
5 accordance with the provisions of chapter 536. A cease and desist order issued by the  
6 ~~[secretary]~~ **director** or ~~[secretary's]~~ **director's** designee is subject to judicial review in  
7 accordance with the provisions of chapter 536 in the circuit court of Cole County.

8 2. A rule adopted under sections 362.1010 to 362.1117 is subject to judicial review in  
9 accordance with the provisions of chapter 536 in the circuit court of Cole County.

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