

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 292
99TH GENERAL ASSEMBLY

0685S.08T

2017

AN ACT

To repeal sections 362.105, 362.111, 362.280, 362.285, 365.100, 408.140, 408.330, and 443.812, RSMo, and to enact in lieu thereof thirty-two new sections relating to powers of certain financial institutions, with penalty provisions.

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

Section A. Sections 362.105, 362.111, 362.280, 362.285, 365.100, 408.140, 408.330, 2 and 443.812, RSMo, are repealed and thirty-two new sections enacted in lieu thereof, to be 3 known as sections 362.105, 362.111, 362.1010, 362.1015, 362.1020, 362.1030, 362.1035, 4 362.1037, 362.1040, 362.1045, 362.1050, 362.1055, 362.1060, 362.1065, 362.1070, 362.1075, 5 362.1080, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105, 362.1110, 362.1115, 362.1116, 6 362.1117, 362.1118, 365.100, 374.191, 408.140, 408.330, and 443.812, to read as follows:

362.105. 1. Every bank and trust company created under the laws of this state may for 2 a fee or other consideration, directly or through a subsidiary company, and upon complying with 3 any applicable licensing statute:

4 (1) Conduct the business of receiving money on deposit and allowing interest thereon 5 not exceeding the legal rate or without allowing interest thereon, and of buying and selling 6 exchange, gold, silver, coin of all kinds, uncurrent money, of loaning money upon real estate or 7 personal property, and upon collateral of personal security at a rate of interest not exceeding that 8 allowed by law, and also of buying, investing in, selling and discounting negotiable and

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 nonnegotiable paper of all kinds, including bonds as well as all kinds of commercial paper; and
10 for all loans and discounts made, the corporation may receive and retain the interest in advance;

11 (2) Accept for payment, at a future date, drafts drawn upon it by its customers and to
12 issue letters of credit authorizing the holders thereof to draw drafts upon it or upon its
13 correspondents at sight or on time not exceeding one year; provided, that no bank or trust
14 company shall incur liabilities under this subdivision to an amount equal at any time in the
15 aggregate to more than its paid-up and unimpaired capital stock and surplus fund, except with
16 the approval of the director under such general regulations as to amount of acceptances as the
17 director may prescribe;

18 (3) Purchase and hold, for the purpose of becoming a member of a Federal Reserve
19 Bank, so much of the capital stock thereof as will qualify it for membership in the reserve bank
20 pursuant to an act of Congress, approved December 23, 1913, entitled "The Federal Reserve Act"
21 and any amendments thereto; to become a member of the Federal Reserve Bank, and to have and
22 exercise all powers, not in conflict with the laws of this state, which are conferred upon any
23 member by the Federal Reserve Act and any amendments thereto. The member bank or trust
24 company and its directors, officers and stockholders shall continue to be subject, however, to all
25 liabilities and duties imposed upon them by any law of this state and to all the provisions of this
26 chapter relating to banks or trust companies;

27 (4) Subscribe for and purchase such stock in the Federal Deposit Insurance Corporation
28 and to make such payments to and to make such deposits with the Federal Deposit Insurance
29 Corporation and to pay such assessments made by such corporation as will enable the bank or
30 trust company to obtain the benefits of the insurance of deposits under the act of Congress
31 known as "The Banking Act of 1933" and any amendments thereto;

32 (5) Invest in a bank service corporation as defined by the act of Congress known as the
33 "Bank Service Corporation Act", Public Law 87-856, as approved October 23, 1962, to the same
34 extent as provided by that act or any amendment thereto;

35 (6) Hold a noncontrolling equity interest in any business entity that conducts only
36 activities that are financial in nature or incidental to financial activity or that is established
37 pursuant to subdivision (16) of this subsection where the majority of the stock or other interest
38 is held by Missouri banks, Missouri trust companies, national banks located in Missouri, or any
39 foreign bank with a branch or branches in Missouri, or any combination of these financial
40 institutions; provided that if the entity is defined pursuant to Missouri law as any type of
41 financial institution subsidiary or other type of entity subject to special conditions or regulations,
42 those conditions and regulations shall remain applicable, and provided that such business entity
43 may be formed as any type of business entity, in which each investor's liability is limited to the
44 investment in and loans to the business entity as otherwise provided by law;

45 (7) Receive upon deposit for safekeeping personal property of every description, and to
46 own or control a safety vault and rent the boxes therein;

47 (8) Purchase and hold the stock of one safe deposit company organized and existing
48 under the laws of the state of Missouri and doing a safe deposit business on premises owned or
49 leased by the bank or trust company at the main banking house and any branch operated by the
50 bank or trust company; provided, that the purchasing and holding of the stock is first duly
51 authorized by resolution of the board of directors of the bank or trust company and by the written
52 approval of the director, and that all of the shares of the safe deposit company shall be purchased
53 and held, and shall not be sold or transferred except as a whole and not be pledged at all, all sales
54 or transfers or pledges in violation hereof to be void;

55 (9) Act as the fiscal or transfer agent of the United States, of any state, municipality,
56 body politic or corporation and in such capacity to receive and disburse money, to transfer,
57 register and countersign certificates of stock, bonds and other evidences of indebtedness;

58 (10) Acquire or convey real property for the following purposes:

59 (a) Real property conveyed to it in satisfaction or part satisfaction of debts previously
60 contracted in the course of its business; ~~and~~

61 (b) Real property purchased at sales under judgment, decrees or liens held by it; **and**

62 (c) **Real property purchased or leased by a bank for the purpose of leasing or**
63 **subleasing that property to a public entity including, but not limited to, government**
64 **buildings, municipal buildings, school buildings and grounds, and public hospitals. The**
65 **bank shall only lease the property to a public entity that has sufficient resources to make**
66 **all rental payments as the payments become due. The lease agreement shall provide that,**
67 **upon the expiration of the lease, the public entity will become the owner of the real**
68 **property and any building or facility located thereon. No bank shall purchase or lease real**
69 **estate for this purpose if the purchase or lease will exceed the bank's lending limit under**
70 **section 362.170;**

71 (11) Purchase, hold and become the owner and lessor of personal property acquired upon
72 the specific request of and for use of a customer; and, in addition, leases that neither anticipate
73 full purchase price repayment on the leased asset, nor require the lease to cover the physical life
74 of the asset, other than those for motor vehicles which will not be used by bank or trust company
75 personnel, and may incur such additional obligations as may be incident to becoming an owner
76 and lessor of the property, subject to the following limitations:

77 (a) Lease transactions do not result in loans for the purpose of section 362.170, but the
78 total amount disbursed under leasing obligations or rentals by any bank to any person,
79 partnership, association, or corporation shall at no time exceed the legal loan limit permitted by
80 statute except upon the written approval of the director of finance; **and**

81 (b) Lease payments are in the nature of rent rather than interest, and the provisions of
82 chapter 408 are not applicable;

83 (12) Contract with another bank or trust company, bank service corporation or other
84 partnership, corporation, association or person, within or without the state, to render or receive
85 **any banking or trust services authorized under this chapter** such as check and deposit sorting
86 and posting, computation and posting of interest and other credits and charges, preparation and
87 mailing of checks, statements, notices, and similar items, or any other clerical, bookkeeping,
88 accounting, statistical, financial counseling, or similar services, or the storage, transmitting or
89 processing of any information or data~~]; except that, the contract shall provide, to the satisfaction~~
90 ~~of the director of finance, that the party providing such services to a bank or trust company will~~
91 ~~be subject to regulation and examination to the same extent as if the services were being~~
92 ~~performed by the bank or trust company on its own premises. This subdivision shall not be~~
93 ~~deemed to authorize a bank or trust company to provide any customer services through any~~
94 ~~system of electronic funds transfer at places other than bank premises] . Any person or entity~~
95 **that provides, by contract or otherwise, such services to a bank or trust company, other**
96 **than an entity that is a founding member and is represented on the executive committee**
97 **of the Payment Card Industry Security Standards Council and that is examined and**
98 **regulated under the Bank Service Company Act (12 U.S.C. Sections 1861 to 1867(c)) or any**
99 **successor statute by an appropriate federal banking agency, shall be subject to**
100 **examination by the division of finance to the same extent as if the service was being**
101 **performed by the bank or trust company on its own premises. Each bank or trust**
102 **company under the jurisdiction of the division of finance shall provide a list of all persons**
103 **or entities providing services to the bank or trust company;**

104 (13) Purchase and hold stock in a corporation whose only purpose is to purchase, lease,
105 hold or convey real property of a character which the bank or trust company holding stock in the
106 corporation could itself purchase, lease, hold or convey pursuant to the provisions of ~~[paragraph~~
107 ~~(a) of]~~ subdivision (10) of this subsection; provided, the purchase and holding of the stock is first
108 duly authorized by resolution of the board of directors of the bank or trust company ~~[and by the~~
109 ~~written approval of the director,]~~ and that all of the shares of the corporation shall be purchased
110 and held by the bank or trust company and shall not be sold or transferred except as a whole;

111 (14) Purchase and sell investment securities, without recourse, solely upon order and for
112 the account of customers; and establish and maintain one or more mutual funds and offer to the
113 public shares or participations therein. Any bank which engages in such activity shall comply
114 with all provisions of chapter 409 regarding the licensing and registration of sales personnel for
115 mutual funds so offered, provided that such banks shall register as a broker-dealer with the office

116 of the commissioner of securities and shall consent to supervision and inspection by that office
117 and shall be subject to the continuing jurisdiction of that office;

118 (15) Make debt or equity investments in corporations or projects, whether for profit or
119 not for profit, designed to promote the development of the community and its welfare, provided
120 that the aggregate investment in all such corporations and in all such projects does not exceed
121 five percent of the unimpaired capital of the bank, and provided that this limitation shall not
122 apply to loans made under the authority of other provisions of law, and other provisions of law
123 shall not limit this subdivision; **and**

124 (16) Offer through one or more subsidiaries any products and services which a national
125 bank may offer through its financial subsidiaries, subject to the limitations that are applicable
126 to national bank financial subsidiaries, and provided such bank or trust company meets the
127 division of finance safety and soundness considerations. This subdivision is enacted to provide
128 in part competitive equality with national banks' powers under the Gramm-Leach-Bliley Act of
129 1999, Public Law 106-102.

130 2. In addition to the power and authorities granted in subsection 1 of this section, and
131 notwithstanding any limitations therein, a bank or trust company may:

132 (1) Purchase or lease, in an amount not exceeding its legal loan limit, real property and
133 improvements thereto suitable for the convenient conduct of its functions. The bank may derive
134 income from renting or leasing such real property or improvements or both. If the purchase or
135 lease of such real property or improvements exceeds the legal loan limit or is from an officer,
136 director, employee, affiliate, principal shareholder or a related interest of such person, prior
137 approval shall be obtained from the director of finance; and

138 (2) Loan money on real estate as defined in section 442.010, and handle escrows,
139 settlements and closings on real estate for the benefit of the bank's customers, as a core part of
140 the banking business, notwithstanding any other provision of law to the contrary.

141 3. In addition to the powers and authorities granted in subsection 1 of this section, every
142 trust company created under the laws of this state shall be authorized and empowered to:

143 (1) Receive money in trust and to accumulate the same at such rate of interest as may be
144 obtained or agreed upon, or to allow such interest thereon as may be prescribed or agreed;

145 (2) Accept and execute all such trusts and perform such duties of every description as
146 may be committed to it by any person or persons whatsoever, or any corporation, and act as
147 assignee, receiver, trustee and depository, and to accept and execute all such trusts and perform
148 such duties of every description as may be committed or transferred to it by order, judgment or
149 decree of any courts of record of this state or other states, or of the United States;

150 (3) Take, accept and hold, by the order, judgment or decree of any court of this state, or
151 of any other state, or of the United States, or by gift, grant, assignment, transfer, devise or
152 bequest of any person or corporation, any real or personal property in trust, and to execute and

153 perform any and all the legal and lawful trusts in regard to the same upon the terms, conditions,
154 limitations and restrictions which may be declared, imposed, established or agreed upon in and
155 by the order, judgment, decree, gift, grant, assignment, transfer, devise or bequest;

156 (4) Buy, invest in and sell all kinds of stocks or other investment securities;

157 (5) Execute, as principal or surety, any bond or bonds required by law to be given in any
158 proceeding, in law or equity, in any of the courts of this state or other states, or of the United
159 States;

160 (6) Act as trustee, personal representative, or conservator or in any other like fiduciary
161 capacity; **and**

162 (7) Act as attorney-in-fact or agent of any person or corporation, foreign or domestic, in
163 the management and control of real or personal property, the sale or conveyance of same, the
164 investment of money, and for any other lawful purpose.

165 4. (1) In addition to the powers and authorities granted in this section, the director of
166 finance may, from time to time, with the approval of the state banking and savings and loan
167 board, issue orders granting such other powers and authorities as have been granted to financial
168 institutions subject to the supervision of the federal government to:

169 (a) State-chartered banks and trust companies which are necessary to enable such banks
170 and trust companies to compete;

171 (b) State-chartered banks and trust companies to establish branches to the same extent
172 that federal law permits national banks to establish branches;

173 (c) Subsidiaries of state-chartered banks and trust companies to the same extent powers
174 are granted to national bank subsidiaries to enable such banks and trust companies to compete;

175 **and**

176 (d) State-chartered banks and trust companies to establish trust representative offices to
177 the same extent national banks are permitted such offices[-] ; **and**

178 (2) The orders shall be promulgated as provided in section 361.105 and shall not be
179 inconsistent with the constitution and the laws of this state.

180 5. As used in this section, the term "subsidiary" shall include one or more business
181 entities of which the bank or trust company is the owner, provided the owner's liability is limited
182 by the investment in and loans to the subsidiary as otherwise provided for by law.

183 6. A bank or trust company to which authority is granted by regulation in subsection 4
184 of this section, based on the population of the political subdivision, may continue to exercise
185 such authority for up to five years after the appropriate decennial census indicates that the
186 population of the town in which such bank or trust company is located has exceeded the limits
187 provided for by regulation pursuant to subsection 4 of this section.

362.111. 1. A bank or trust company may impose fees or service charges on deposit
2 accounts; however, such fees or service charges are subject to such conditions or requirements

3 that may be fixed by regulations pursuant to section 361.105 by the director of the division of
4 finance and the state banking and savings and loan board. Notwithstanding any law to the
5 contrary, no such condition or requirement shall be more restrictive than the fees or service
6 charges on deposit accounts or similar accounts permitted any federally chartered depository
7 institution and no contractual fee charged for overdrawing the balance of a deposit account shall
8 be deemed interest.

9 **2. A bank may impose a convenience fee for payments using an alternative payment**
10 **channel that accepts a debit or credit card not present transaction, non-face-to-face**
11 **payment, provided that:**

12 **(a) The person making the payment is notified of the convenience fee; and**

13 **(b) The fee is fixed or flat, except that the fee may vary based upon method of**
14 **payment used.**

15 **3.** An agreement to operate or share an automated teller machine shall not prohibit an
16 owner or operator of the automated teller machine from imposing, on an individual who
17 conducts a transaction using a foreign account, an access fee or surcharge that is not otherwise
18 prohibited under federal or state law.

19 ~~[3-]~~ **4.** As used in this section, the following terms mean:

20 **(1) "Automated teller machine",** any electronic device, wherever located, through which
21 a consumer may initiate an electronic funds transfer or may order, instruct, or authorize a
22 financial institution to debit or credit an account and includes any machine or device which may
23 be used to carry out electronic banking business. "Automated teller machine" does not include
24 point of sale terminals or telephones or personal computers operated by a consumer;

25 **(2) "Foreign account",** an account with a financial institution located outside the United
26 States.

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

362.1015. For purposes of sections 362.1010 to 362.1115, the following terms mean:

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

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

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

11 **(4) "Designated relative", a common ancestor of a family, either living or deceased,**
12 **who is so designated in an organizational instrument. No family trust company shall have**
13 **more than one designated relative;**

14 **(5) "Engage in trust company business with the general public", any sales,**
15 **solicitations, arrangements, agreements, or transactions to provide trust or other business**
16 **services, whether for a fee, commission, or any other type of remuneration, with any person**
17 **who is not a family member or any sole proprietorship, partnership, limited liability**
18 **company, joint venture, association, corporation, trust, estate, business trust, or other**
19 **company that is not one hundred 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**
32 **(c) of this subdivision;**

33 **(f) The probate estate of any person who qualified as a family member under**
34 **paragraphs (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**
37 **which all permissible distributees, as defined under subdivision (15) of section 456.1-103,**
38 **qualify under paragraphs (a) through (g) of this subdivision or are charitable foundations,**
39 **charitable trusts, or other charitable entities; or**

40 **(i) A revocable trust of which one or more family members are the sole settlors.**

41

42 **For purposes of this subdivision, a legally adopted person shall be treated as a natural**
43 **child of the adoptive parents; a stepchild shall be treated as a natural child of the family**
44 **member who is or was the stepparent of that child; and a foster child or an individual who**
45 **was a minor when a family member became his or her legal guardian shall be treated as**
46 **a natural child of the family member appointed as foster parent or guardian. Degrees of**
47 **kinship are calculated by adding the number of steps from the designated relative through**

48 each person to the family member either directly in case of lineal kinship or through the
49 common ancestor in the case of collateral kinship;

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

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

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

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

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

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

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

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

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

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

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

76 (12) "Officer", an individual, regardless of whether the individual has an official
77 title or receives a salary or other compensation, who may participate in the major policy
78 making functions of a family trust company other than as a director. The term shall not
79 include an individual who may have an official title and exercises discretion in the
80 performance of duties and functions but who does not participate in determining the major
81 policies of the family trust company and whose decisions are limited by policy standards
82 established by other officers, regardless of whether the policy standards have been adopted
83 by the board of directors. The chair of the board of directors, the president, the chief
84 executive officer, the chief financial officer, the senior trust officer, all executive vice

85 **presidents of a family trust company, and all managers if organized as a limited liability**
86 **company are presumed to be officers unless such officer is excluded, other than in the**
87 **capacity of a director, by resolution of the board of directors or members or by the bylaws**
88 **or operating agreement of the family trust company from participating in major policy**
89 **making functions of the family trust company, and such excluded officer does not actually**
90 **participate therein;**

91 **(13) "Organizational instrument", the articles of incorporation for a corporation**
92 **or the articles of organization for a limited liability company;**

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

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

98 **(16) "Qualified beneficiary", the same meaning as defined under subdivision (20)**
99 **of section 456.1-103;**

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

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

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

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

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

362.1020. If a family trust company limits its activities to the activities authorized
2 **under sections 362.1010 to 362.1117, then section 361.160 and sections 362.010 to 362.950**
3 **shall not apply to the family trust company.**

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**
4 **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**
6 **be used solely to support the secretary'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 shall revert to the credit of the**

9 **general revenue fund. The state treasurer shall invest moneys in the fund in the same**
10 **manner as other funds are invested. Any interest and moneys earned on such investments**
11 **shall be credited to the fund.**

12 **2. No family trust company shall conduct business in this state unless such family**
13 **trust company pays a one-time original filing fee of five thousand dollars to the secretary**
14 **and registers with the secretary in a format prescribed by the secretary. The secretary**
15 **shall deposit all family trust company filing fees into the family trust company fund**
16 **established under subsection 1 of this section.**

17 **3. To register, a family trust company that is not a foreign family trust company**
18 **shall file its organizational instrument with the secretary. At a minimum, the**
19 **organizational instrument shall state:**

20 **(1) The name of the designated relative;**

21 **(2) That the family trust company is a family trust company as defined under**
22 **sections 362.1010 to 362.1117; and**

23 **(3) That its operations will comply with sections 362.1010 to 362.1117.**

24 **4. A foreign family trust company shall register by filing with the secretary:**

25 **(1) An initial registration to begin operations as a foreign family trust company;**
26 **and**

27 **(2) An application for a certificate of authority in accordance with and subject to**
28 **chapters 347 or 351.**

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

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

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

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

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

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

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

40 **(c) Any other offices located within this state;**

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

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

45 **(5) Satisfactory proof, as determined by the secretary, that the foreign family trust**
46 **company is organized in a manner similar to a Missouri family trust company and is in**
47 **compliance with the family trust company laws and regulations of the jurisdiction in which**
48 **the foreign family trust company was incorporated or organized; and**

49 **(6) Any other information reasonably and customarily required by the secretary**
50 **of foreign corporations or foreign limited liability companies seeking to qualify to conduct**
51 **business in this state.**

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**
3 **capital account of a family trust company shall consist of one or more asset groups**
4 **described under 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. 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**
13 **has a principal or branch office in this state.**

14 **3. In addition to the requirements of subsection 2 of this section, a foreign family**
15 **trust 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.**

362.1037. 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**
4 **three directors or managers.**

5

6

7 **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
2 **in 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 chapters 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**
10 **under this chapter. This subdivision shall not apply to a foreign family trust company**
11 **using a fictitious name that is registered and maintained in this state pursuant to the**
12 **requirements administered by the secretary and that distinguishes the foreign family trust**
13 **company from a nonfamily trust company authorized to operate under this chapter;**

14 **(2) The purpose for which the company is formed, which shall clearly identify the**
15 **restricted activities permissible to a family trust company under sections 362.1010 to**
16 **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**
20 **not violate section 362.425.**

362.1045. 1. A family trust company may procure and maintain fidelity bonds on
2 **all active officers, directors, managers, and members acting in a managerial capacity and**
3 **on all employees of the company in order to indemnify the family trust company against**
4 **loss resulting from dishonest, fraudulent, or criminal acts or omissions committed by any**
5 **such person, whether acting alone or in combination with other persons and regardless of**
6 **whether such person receives a salary or other compensation from the company.**

7 **2. A family trust company may also procure and maintain an errors and omissions**
8 **insurance policy in which the family trust company is listed as the insured to cover the acts**
9 **and omissions of officers, directors, managers, and members acting in a managerial**
10 **capacity, regardless of whether any such person receives a salary or other compensation**
11 **from the company.**

12 **3. A family trust company may also procure and maintain other insurance policies**
13 **necessary or desirable in connection with the business of the company including, but not**
14 **limited to, one or more casualty insurance policies.**

362.1050. 1. A family trust company shall maintain its fiduciary books and records
2 **separate and distinct from other records of the company and shall segregate all assets held**
3 **in any fiduciary capacity from other assets of the company.**

4 **2. Assets received or held in a fiduciary capacity by a family trust company shall**
5 **not be subject to the debts or obligations of the company.**

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

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

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

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

(3) Any other information reasonably and customarily required by the secretary of general business corporations in connection with filing their annual registration reports.

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

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

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

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

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

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

(6) Documentation, to the satisfaction of the secretary, showing that the foreign family trust company is in compliance with the family trust company laws and regulations of the jurisdiction in which it was incorporated or organized; and

(7) Any other information reasonably and customarily required by the secretary of general business corporations in connection with filing their annual registration reports.

4. An annual registration report shall be submitted on a form prescribed by the secretary 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 co-personal representative, executor, or administrator for a**
3 **probate 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**
6 **a sole fiduciary or cofiduciary, including acting as a trustee, advisory agent, assignee,**
7 **assignee 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,**
10 **receiver, registrar, safekeeping or subscription agent, transfer agent for entities other than**
11 **public companies, warrant agent, or other similar capacity generally performed by a**
12 **corporate trustee. In so acting, the family trust company may possess, purchase, sell,**
13 **invest, reinvest, safekeep, or otherwise manage or administer the real or personal property**
14 **of family members;**

15 **(4) Exercise the powers of a corporation or limited liability company incorporated**
16 **or organized under the laws of this state, or qualified to transact business as a foreign**
17 **corporation or limited liability company under the laws of this state that are reasonably**
18 **necessary to enable the trust company to fully exercise a power conferred under sections**
19 **362.1010 to 362.1117 in accordance with commonly accepted customs and usages;**

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

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

29 **2. A foreign family trust company in good standing in the jurisdiction in which it**
30 **is incorporated or organized may exercise all the trust powers in this state that a Missouri**
31 **family trust company may exercise.**

362.1065. Notwithstanding any other provision of sections 362.1010 to 362.1117, no
2 **family trust company shall engage in commercial banking. However, a family trust**
3 **company may establish accounts at financial institutions for its own purposes or on behalf**
4 **of family members to whom it provides services under sections 362.1010 to 362.1117.**

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

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

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

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

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

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

19 **(1) Bonds or other securities underwritten or brokered by:**

20 **(a) The family trust company;**

21 **(b) A family affiliate; or**

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

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

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

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

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

34 **(3) The family trust company discloses its intent to exercise the authority granted**
35 **under subsection 4 of this section in writing to all of the trust company's account statement**
36 **recipients before the first exercise of such authority, and each such disclosure states:**

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

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

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

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

47 **(1) Is negotiated at a fair price;**

48 **(2) Is in accordance with:**

49 **(a) The interest of the qualified beneficiaries of the trust for which the purchase is**
50 **made; 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**
56 **fiduciary relationship.**

57 **7. Notwithstanding subsections 1 through 6 of this section, no family trust company**
58 **shall, while acting as a fiduciary, purchase a bond or security issued by the family trust**
59 **company, its 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 **(c) The written consent of the settlor of such trust for which the family trust**
64 **company is serving as trustee; or**

65 **(d) The written consent of every adult qualified beneficiary of such trust who, at**
66 **the time of such purchase, is entitled to receive income under the trust or who would be**
67 **entitled to receive a distribution of principal if the trust were terminated; and**

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

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

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

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

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

84 **(4) Transact business with a family member;**

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

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

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

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

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

362.1075. If a family trust company is required to make an oath, affirmation,
2 **affidavit, or acknowledgment regarding a fiduciary capacity in which the family trust**
3 **company is acting or preparing to act, a director, officer, or, if the company is a limited**
4 **liability company, a manager or officer expressly authorized by the family trust company**
5 **shall make and, if required, subscribe to such oath, affirmation, affidavit, or**
6 **acknowledgment on behalf of the company.**

362.1080. No family trust company shall advertise its services to the public.

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

4 **2. The secretary or the secretary's designee may examine or investigate a family**
5 **trust company at any time the secretary deems necessary to determine if the family trust**
6 **company engaged in an act prohibited under section 362.1065 or 362.1080 and, if a family**

7 trust company engaged in such act, to determine whether any other applicable law was
8 violated.

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

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

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

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

11 **(4) A violation of any order of the secretary;**

12 **(5) A breach of any written agreement with the secretary;**

13 **(6) A prohibited act or practice under section 362.1065;**

14 **(7) A willful failure to provide information or documents to the secretary upon**
15 **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**
23 **of charges or if a hearing is held and the secretary or secretary's designee finds that any**
24 **of the charges are true, the secretary or secretary's designee may enter an order directing**
25 **the family trust company, family trust company affiliated party, or the individual named**
26 **in the notice of charges to cease and desist such conduct and to take corrective action.**

27 **4. A contested or default cease and desist order is effective when reduced to writing**
28 **and served upon the family trust company, family trust company affiliated party, or the**
29 **individual named therein. An uncontested cease and desist order is effective as agreed.**

30 **5. If the secretary or the secretary's designee finds that conduct described under**
31 **subsection 1 of this section is likely to cause substantial prejudice to members,**
32 **shareholders, beneficiaries of fiduciary accounts of the family trust company, or**
33 **beneficiaries of services rendered by the family trust company, the secretary or the**
34 **secretary's designee may issue an emergency cease and desist order requiring the family**
35 **trust company, family trust company affiliated party, or individual named therein to**
36 **immediately cease and desist from engaging in the conduct stated and to take corrective**
37 **action. The emergency order is effective immediately upon service of a copy of the order**
38 **upon the family trust company or family trust company affiliated party and shall remain**
39 **effective for ninety days. If the secretary or the secretary's designee begins nonemergency**
40 **cease and desist proceedings under subsection 1 of this section, the emergency order shall**
41 **remain effective until the conclusion of the proceedings under this section.**

42 **6. A family trust company shall have ninety days to wind up its affairs after entry**
43 **of any order to cease and desist from operating as a family trust company. If a family trust**
44 **company that is not a foreign family trust company is still operating after ninety days, the**
45 **secretary or the secretary's designee may seek an order from a circuit court for the**
46 **annulment or dissolution of the company. If a foreign family trust company is still**
47 **operating after ninety days, the secretary or the secretary's designee may seek an**
48 **injunction from a circuit court restraining the company from continuing to operate in this**
49 **state.**

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

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

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

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

3. If no hearing is requested within thirty days after the date of service of the notice of charges or if a hearing is held and the secretary or secretary's designee finds that any of the charges in the notice of charges are true, the secretary or secretary's designee may enter an order that removes the family trust company affiliated party from the family trust

25 **company or that restricts or prohibits the family trust company affiliated party from**
26 **participating in the affairs of the family trust company.**

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

30 **5. (1) The chief executive officer of a family trust company or the person holding**
31 **the equivalent office shall promptly notify the secretary if such person has actual**
32 **knowledge that a family trust company affiliated party is charged with a felony in a state**
33 **or federal court.**

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

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

58 **6. No family trust company affiliated party removed from office under this section**
59 **shall be eligible for reinstatement to such office or to any other official position in a family**
60 **trust company or financial institution in this state except with the written consent of the**
61 **secretary. A family trust company affiliated party who is removed, restricted, or**

62 **prohibited from participation in the affairs of a family trust company under this section**
63 **may petition the secretary for modification or termination of such removal, restriction, or**
64 **prohibition.**

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

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

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

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

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

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

16 **2. (1) If a corporation, each customer and stockholder, or, if a limited liability**
17 **company, each member has the right to inspect the books and records of a family trust**
18 **company as they pertain to such person's accounts or the determination of such person's**
19 **voting rights.**

20 **(2) The books and records pertaining to customers, members, and stockholders of**
21 **a family trust company shall be kept confidential by the company and its directors,**
22 **managers, officers, and employees. The books and records of customers, members, and**
23 **stockholders shall not be released except upon the express authorization of the customer**
24 **as to his or her own accounts or a stockholder or member regarding his or her voting**
25 **rights. However, information may be released without the authorization of a customer,**
26 **member, or shareholder in a manner prescribed by the board of directors of a corporation**
27 **or managers of a limited liability company for the purposes of verifying or corroborating**
28 **the existence or amount of a customer's account if such information is reasonably provided**

29 to meet the needs of commerce and to ensure accurate credit information. Notwithstanding
30 this subdivision, this subsection shall not prohibit a family trust company from disclosing
31 financial information as permitted under 15 U.S.C. Section 6802, as amended.

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

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

38 3. For purposes of this section, the term "books and records" shall include, but is
39 not 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
4 or 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 or the secretary's authorized representative during the normal
10 business hours of the family trust company. A current list of shareholders or members
11 shall be made available to the secretary or the secretary's authorized representative for
12 their inspection and, upon the request of the secretary, shall be submitted to the secretary.

13 2. The secretary shall retain for at least ten years:

14 (1) Examination reports;

15 (2) Investigatory records;

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

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

18 3. A copy of any document on file with the secretary that is certified by the
19 secretary as a true copy may be introduced in evidence as if it were the original. The
20 secretary shall establish a schedule of fees for preparing true copies of documents.

21 4. Orders issued by courts or administrative law judges for the production of
22 confidential records or information shall provide for inspection in camera by the court or
23 the administrative law judge. If the court or administrative law judge determines that the
24 documents requested are relevant or would likely lead to the discovery of admissible

25 evidence, the documents shall be subject to further orders by the court or the
26 administrative law judge to protect the confidentiality thereof. An order directing the
27 release of information shall be immediately reviewable, and a petition by the secretary for
28 review of the order shall automatically stay any further proceedings in a trial court or
29 administrative hearing until the disposition of the petition by the reviewing court. If any
30 other party files a petition for review, such filing shall stay proceedings only upon an order
31 of the reviewing court.

362.1115. 1. The following information held by the secretary is confidential and
2 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 from a person from another state or
12 nation or the federal government that is otherwise confidential or exempt under the laws
13 of 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 finds that such confidentiality
16 will result in substantial risk of financial loss to the public.

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

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

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

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

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

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

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

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

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

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

44 **(1) A report required by federal law; or**

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

46 **4. The willful disclosure of information made confidential and exempt by this**
47 **section is a class E felony.**

362.1116. The secretary may issue forms and orders and, after notice and comment,
2 **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 or secretary's designee under any**
3 **provision of sections 362.1010 to 362.1117 shall be entitled to a hearing before the secretary**
4 **or the secretary's authorized representative in accordance with the provisions of chapter**
5 **536. A cease and desist order issued by the secretary or secretary's designee is subject to**
6 **judicial review in accordance with the provisions of chapter 536 in the circuit court of Cole**
7 **County.**

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

362.1118. If any provision of sections 362.1010 to 362.1117 or its application to any
2 **person or circumstances is held invalid, the invalidity does not affect other provisions or**
3 **applications of sections 362.1010 to 362.1117 that can be given effect without the invalid**
4 **provision or application, and to this end the provisions of sections 362.1010 to 362.1117 are**
5 **severable.**

365.100. 1. For contracts entered into on or after August 28, 2005, if the contract so
2 **provides, the holder thereof may charge, finance, and collect:**

3 (1) A charge for late payment on each installment or minimum payment in default for
4 a period of not less than fifteen days in an amount not to exceed five percent of each installment
5 due or the minimum payment due or twenty-five dollars, whichever is less; except that, a
6 minimum charge of ten dollars may be made, or when the installment is for twenty-five dollars
7 or less, a charge for late payment for a period of not less than fifteen days shall not exceed five
8 dollars, provided, however, that a minimum charge of one dollar may be made;

9 (2) Interest on each delinquent payment at a rate which shall not exceed the highest
10 lawful contract rate. In addition to such charge, the contract may provide for the payment of
11 attorney fees not exceeding fifteen percent of the amount due and payable under the contract
12 where the contract is referred for collection to any attorney not a salaried employee of the holder,
13 plus court costs;

14 (3) A dishonored or insufficient funds check fee equal to such fee as provided in section
15 408.653, in addition to fees charged by a bank for each check, draft, order or like instrument
16 which is returned unpaid; and

17 (4) All other reasonable expenses incurred in the origination, servicing, and collection
18 of the amount due under the contract.

19 **2. A holder of a contract may impose a convenience fee for payments using an**
20 **alternative payment channel that accepts a debit or credit card not present transaction,**
21 **non-face-to-face payment, provided that:**

22 (a) **The person making the payment is notified of the convenience fee; and**

23 (b) **The fee is fixed or flat, except that the fee may vary based upon method of**
24 **payment used.**

374.191. 1. If an insurance company is required to pay interest on any claims,
2 **refunds, penalties, or payments under a market conduct examination, investigation,**
3 **stipulation of settlement agreement, voluntary forfeiture agreement, or any other legal or**
4 **remedial action ordered by the department under any law of this state, in which the**
5 **interest rate is not provided for by law, such claims, refunds, penalties, or payments shall**
6 **bear interest at the annual adjusted prime rate of interest as determined by section 32.065,**
7 **but under no circumstance shall such interest rate exceed nine percent per annum.**

8 **2. The provisions of this section shall not apply to payments subject to the**
9 **provisions of section 376.383 nor any other statute in which the interest rate is specified.**

408.140. 1. No further or other charge or amount whatsoever shall be directly or
2 indirectly charged, contracted for or received for interest, service charges or other fees as an
3 incident to any such extension of credit except as provided and regulated by sections 367.100 to
4 367.200 and except:

5 (1) On loans for thirty days or longer which are other than "open-end credit" as such term
6 is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not

7 to exceed ten percent of the principal amount loaned not to exceed one hundred dollars may be
8 charged by the lender; however, no such fee shall be permitted on any extension, refinance,
9 restructure or renewal of any such loan, unless any investigation is made on the application to
10 extend, refinance, restructure or renew the loan;

11 (2) The lawful fees actually and necessarily paid out by the lender to any public officer
12 for filing, recording, or releasing in any public office any instrument securing the loan, which
13 fees may be collected when the loan is made or at any time thereafter; however, premiums for
14 insurance in lieu of perfecting a security interest required by the lender may be charged if the
15 premium does not exceed the fees which would otherwise be payable;

16 (3) If the contract so provides, a charge for late payment on each installment or minimum
17 payment in default for a period of not less than fifteen days in an amount not to exceed five
18 percent of each installment due or the minimum payment due or fifteen dollars, whichever is
19 greater, not to exceed fifty dollars. If the contract so provides, a charge for late payment on each
20 twenty-five dollars or less installment in default for a period of not less than fifteen days shall
21 not exceed five dollars;

22 (4) If the contract so provides, a charge for late payment for a single payment note in
23 default for a period of not less than fifteen days in an amount not to exceed five percent of the
24 payment due; provided that, the late charge for a single payment note shall not exceed fifty
25 dollars;

26 (5) Charges or premiums for insurance written in connection with any loan against loss
27 of or damage to property or against liability arising out of ownership or use of property as
28 provided in section 367.170; however, notwithstanding any other provision of law, with the
29 consent of the borrower, such insurance may cover property all or part of which is pledged as
30 security for the loan, and charges or premiums for insurance providing life, health, accident, or
31 involuntary unemployment coverage;

32 (6) Reasonable towing costs and expenses of retaking, holding, preparing for sale, and
33 selling any personal property in accordance with ~~[section 400.9]~~ **the uniform commercial code**
34 **- secured transactions, sections 400.9-101 to 400.9-809;**

35 (7) Charges assessed by any institution for processing a refused instrument plus a
36 handling fee of not more than twenty-five dollars;

37 (8) If the contract or promissory note, signed by the borrower, provides for attorney fees,
38 and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the
39 amount due and payable under such contract or promissory note, together with any court costs
40 assessed. The attorney fees shall only be applicable where the contract or promissory note is
41 referred for collection to an attorney, and is not handled by a salaried employee of the holder of
42 the contract;

43 (9) Provided the debtor agrees in writing, the lender may collect a fee in advance for
44 allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more
45 than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are
46 made until the first loan payment is collected and no more than one deferral in a twelve-month
47 period is agreed to and collected on any one loan; this subdivision applies to nonprecomputed
48 loans only and does not affect any other subdivision;

49 (10) If the open-end credit contract is tied to a transaction account in a depository
50 institution, such account is in the institution's assets and such contract provides for loans of
51 thirty-one days or longer which are "open-end credit", as such term is defined in the federal
52 Consumer Credit Protection Act and regulations thereunder, the creditor may charge a credit
53 advance fee of up to the lesser of seventy-five dollars or ten percent of the credit advanced from
54 time to time from the line of credit; such credit advance fee may be added to the open-end credit
55 outstanding along with any interest, and shall not be considered the unlawful compounding of
56 interest as ~~[that term is defined in]~~ **specified under** section 408.120;

57 (11) A deficiency waiver addendum, guaranteed asset protection, or a similar product
58 purchased as part of a loan transaction with collateral and at the borrower's consent, provided the
59 cost of the product is disclosed in the loan contract, is reasonable, and the requirements of
60 section 408.380 are met;

61 **(12) A convenience fee for payments using an alternative payment channel that**
62 **accepts a debit or credit card not present transaction, non-face-to-face payment, provided**
63 **that:**

64 **(a) The person making the payment is notified of the convenience fee; and**

65 **(b) The fee is fixed or flat, except that the fee may vary based upon method of**
66 **payment used.**

67 2. Other provisions of law to the contrary notwithstanding, an open-end credit contract
68 under which a credit card is issued by a company, financial institution, savings and loan or other
69 credit issuing company whose credit card operations are located in Missouri may charge an
70 annual fee, provided that no finance charge shall be assessed on new purchases other than cash
71 advances if such purchases are paid for within twenty-five days of the date of the periodic
72 statement therefor.

73 3. Notwithstanding any other provision of law to the contrary, in addition to charges
74 allowed pursuant to section 408.100, an open-end credit contract provided by a company,
75 financial institution, savings and loan or other credit issuing company which is regulated
76 pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

408.330. 1. If a retail time contract or a retail charge agreement so provides, the holder
2 thereof may charge and collect:

3 (1) A premium for insurance in lieu of charges for perfecting a security interest required
4 by the lender if the premium does not exceed the fees which would otherwise be payable;

5 (2) Charges assessed by any institution for processing a refused instrument plus a
6 handling fee of not more than fifteen dollars;

7 (3) A delinquency and collection charge on each installment in default for a period of
8 not less than ten days in an amount not to exceed ten dollars or five dollars when the monthly
9 installment is less than twenty-five dollars; or

10 (4) Interest on each delinquent payment thereunder at a rate which will not exceed the
11 highest lawful contract rate. In addition to such delinquency charge, the contract may provide
12 for the payment of attorney fees not exceeding fifteen percent of the amount due and payable
13 under such contract where such contract is referred for collection to an attorney not a salaried
14 employee of the holder of the contract and for court costs.

15 2. The parties to a retail time contract who have entered into more than one contract at
16 substantially different times may agree to consolidate such contracts resulting in a single
17 schedule of payments; provided, however, that the time charge on the new unpaid balance shall
18 not exceed the maximum specified in section 408.300.

19 **3. A holder of a contract may impose a convenience fee for payments using an**
20 **alternative payment channel that accepts a debit or credit card not present transaction,**
21 **non-face-to-face payment, provided that:**

22 **(a) The person making the payment is notified of the convenience fee; and**

23 **(b) The fee is fixed or flat, except that the fee may vary based upon method of**
24 **payment used.**

443.812. 1. Only one license shall be issued to each person conducting the activities of
2 a residential mortgage **loan** broker. A residential mortgage **loan** broker shall register with the
3 director each office, place of business or location in Missouri where the residential mortgage
4 loan broker conducts any part of the residential mortgage loan broker's business pursuant to
5 section 443.839.

6 2. Residential mortgage loan brokers may only solicit, broker, fund, originate, serve and
7 purchase residential mortgage loans in conformance with sections 443.701 to 443.893 and such
8 rules as may be promulgated by the director.

9 3. No residential mortgage loan broker shall permit an unlicensed individual to engage
10 in the activities of a mortgage loan originator and no residential mortgage loan broker shall
11 permit a mortgage loan originator to engage in the activities of a mortgage loan originator under
12 the supervision of the residential mortgage loan broker until that mortgage loan originator is
13 shown to be employed by the residential mortgage loan broker as provided in this section.

14 4. Each residential mortgage loan broker shall report and file a listing with the director
15 showing each mortgage loan originator licensed in Missouri and employed under the supervision

16 of the residential mortgage loan broker. The listing shall show the name and unique identifier
17 of each mortgage loan originator. The listing shall be updated with changes and filed no later
18 than the next business day. The director may authorize a system of reporting that shows
19 mortgage loan originators employed by Missouri residential mortgage loan brokers via the
20 NMLSR in substitution for the report and filing requirement under this subsection.

21 5. The director may grant waivers of residential mortgage loan broker licensing
22 requirements for persons engaged primarily in servicing residential mortgage loans where such
23 waiver shall benefit borrowers including in particular the requirement to maintain a full-service
24 office in Missouri.

25 **6. (1) The provisions of this subsection shall apply only to residential mortgage**
26 **loan brokers exclusively making loans on manufactured or modular homes.**

27 **(2) A residential mortgage loan broker licensed in this state shall not be required**
28 **to maintain a full-service office in Missouri; however, nothing in this subsection shall be**
29 **construed as relieving a broker of the requirement to be licensed in this state and to obtain**
30 **a certificate of authority to transact business in this state from the secretary of state.**

31 **(3) A residential mortgage loan broker licensed in this state who does not maintain**
32 **a full-service office in Missouri shall file with the license application an irrevocable consent**
33 **in a form to be determined by the director, duly acknowledged, which provides that, for**
34 **suits and actions commenced against the broker in the courts of this state and, if necessary,**
35 **for actions brought against the broker, the venue shall lie in the circuit court of Cole**
36 **County.**

37 **(4) The director may assess the reasonable costs of any investigation incurred by**
38 **the division that are outside the normal expense of any annual or special examination or**
39 **any other costs incurred by the division as a result of a licensed residential mortgage loan**
40 **broker who does not maintain a full-service office in Missouri. All costs assessed under**
41 **this subsection shall be paid to the director of the department of insurance, financial**
42 **institutions and professional registration and shall be deposited into the credit of the**
43 **division of finance.**

44

2 ~~[362.280. 1. The board of directors of every bank and trust company at~~
3 ~~least once in each year and whenever and as often as required by the director, and~~
4 ~~within thirty days after notice from him, shall examine or cause a committee of~~
5 ~~at least three of its members or stockholders to examine fully the books, papers~~
6 ~~and affairs of the bank, and the loans and discounts and acceptances thereof, and~~
7 ~~particularly the loans or discounts or acceptances made directly or indirectly to~~
8 ~~its officers or directors, or for the benefit of these officers or directors, or for the~~
9 ~~benefit of other corporations of which these officers or directors are also officers~~
~~or directors, or in which they have a beneficial interest as stockholders, creditors,~~

10 or otherwise, with the special view of ascertaining their safety and present value;
11 and the value of the collateral security, if any, held in connection therewith, and
12 into such other matters as the director may require; provided, however, that no
13 examination shall be required of a bank or trust company which is a member of
14 the Federal Reserve System or of a bank or trust company whose deposits are
15 insured by the Federal Deposit Insurance Corporation.—

16 ————— 2. The directors or committee of stockholders shall have the power to
17 employ such assistance in making such examination as they may deem
18 necessary.]
19

2 [362.285. 1. Within ten days succeeding any examination made pursuant
3 to the requirements of section 362.280, a report in writing thereof, sworn to by
4 the directors or stockholders making the same, shall be made to the board of
5 directors of the bank or trust company, and placed on file in the bank or trust
6 company, and a duplicate thereof filed in the office of the finance director.

7 ————— 2. The report shall particularly contain a statement of the assets and
8 liabilities of the bank or trust company examined, as shown by the books;
9 together with such deductions from the assets, and the addition of the liabilities;
10 direct, indirect, contingent or otherwise, as the directors or committee, after the
11 examination, may find necessary in order to determine the true condition of the
12 bank or trust company. It shall also contain a statement showing in detail every
13 known liability to the bank or trust company, direct or indirect, contingent or
14 otherwise, of every officer or director thereof and of every corporation in which
15 the officer or director owns stock to the amount of twenty-five percent of the total
16 outstanding stock, or of which the officer or director is also an officer or director.
17 It shall also contain a statement, in detail, of loans, if any, which in their opinion
18 are doubtful or worthless, together with their reasons for so regarding them; also
19 a statement of loans made on collateral security which in their opinion are
20 insufficiently secured, giving in each case the amount of the loan, the name and
21 market value of the collateral, if it has any market value, and, if not, a statement
22 of that fact, and its actual value as nearly as possible. The report shall also
23 contain a statement of overdrafts, of the names and amounts of the ones
24 considered worthless or doubtful, and a full statement of such other matters as
25 affect the solvency and soundness of the institution.—

26 ————— 3. If the directors of any bank or trust company shall fail to make, or to
27 cause to be made or to file the report of examination in the manner and within the
28 time specified, the bank or trust company shall forfeit to the state one hundred
dollars for every day such report shall be delayed.]

✓