

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 430
99TH GENERAL ASSEMBLY

Reported from the Committee on Insurance and Banking, March 16, 2017, with recommendation that the Senate Committee Substitute do pass.

1838S.03C

ADRIANE D. CROUSE, Secretary.

AN ACT

To amend chapter 362, RSMo, by adding thereto twenty-five new sections relating to family trust companies, with penalty provisions.

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

Section A. Chapter 362, RSMo, is amended by adding thereto twenty-five
2 new sections, to be known as sections 362.1010, 362.1015, 362.1020, 362.1030,
3 362.1035, 362.1037, 362.1040, 362.1045, 362.1050, 362.1055, 362.1060, 362.1065,
4 362.1070, 362.1075, 362.1080, 362.1085, 362.1090, 362.1095, 362.1100, 362.1105,
5 362.1110, 362.1115, 362.1116, 362.1117, and 362.1118, to read as follows:

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

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

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

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

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

14 (4) "Designated relative", a common ancestor of a family, either
15 living or deceased, who is so designated in an organizational

16 instrument. No family trust company shall have more than one
17 designated relative;

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

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

29 (a) One or more family members; or

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

33 (7) "Family member":

34 (a) A designated relative;

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

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

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

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

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

45 (g) A family affiliate;

46 (h) An irrevocable trust funded exclusively by one or more
47 family members of which all permissible distributees, as defined under
48 subdivision (15) of section 456.1-103, qualify under paragraphs (a)
49 through (g) of this subdivision or are charitable foundations, charitable
50 trusts, or other charitable entities; or

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

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

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

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

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

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

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

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

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

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

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

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

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

95 (12) "Officer", an individual, regardless of whether the individual
96 has an official title or receives a salary or other compensation, who
97 may participate in the major policy making functions of a family trust
98 company other than as a director. The term shall not include an
99 individual who may have an official title and exercises discretion in the
100 performance of duties and functions but who does not participate in
101 determining the major policies of the family trust company and whose
102 decisions are limited by policy standards established by other officers,
103 regardless of whether the policy standards have been adopted by the
104 board of directors. The chair of the board of directors, the president,
105 the chief executive officer, the chief financial officer, the senior trust
106 officer, all executive vice presidents of a family trust company, and all
107 managers if organized as a limited liability company are presumed to
108 be officers unless such officer is excluded, other than in the capacity
109 of a director, by resolution of the board of directors or members or by
110 the bylaws or operating agreement of the family trust company from
111 participating in major policy making functions of the family trust
112 company, and such excluded officer does not actually participate
113 therein;

114 (13) "Organizational instrument", the articles of incorporation for
115 a corporation or the articles of organization for a limited liability
116 company;

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

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

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

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

127 family trust company;

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

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

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

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

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

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

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

21 3. To register, a family trust company that is not a foreign family

22 trust company shall file its organizational instrument with the
23 secretary. At a minimum, the organizational instrument shall state:

24 (1) The name of the designated relative;

25 (2) That the family trust company is a family trust company as
26 defined under sections 362.1010 to 362.1117; and

27 (3) That its operations will comply with sections 362.1010 to
28 362.1117.

29 4. A foreign family trust company shall register by filing with the
30 secretary:

31 (1) An initial registration to begin operations as a foreign family
32 trust company; and

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

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

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

40 (a) Will comply with the provisions of sections 362.1010 to
41 362.1117; and

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

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

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

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

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

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

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

56 (5) Satisfactory proof, as determined by the secretary, that the
57 foreign family trust company is organized in a manner similar to a
58 Missouri family trust company and is in compliance with the family

59 trust company laws and regulations of the jurisdiction in which the
60 foreign family trust company was incorporated or organized; and

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

362.1035. 1. No family trust company shall be organized or
2 operated with a capital account of less than two hundred fifty thousand
3 dollars. The full amount of the initial capital account of a family trust
4 company shall consist of one or more asset groups described under
5 subsection 1 of section 362.1070, exclusive of all organization expenses.

6 2. A family trust company shall maintain:

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

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

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

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

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

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

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

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

3 (1) If a corporation, a board of directors that consists of at least
4 three directors; or

5 (2) If a limited liability company, a board of directors or
6 managers that consists of three directors or managers.

7 At least one director or manager of the company shall be a resident of
8 this state.

362.1040. 1. One or more persons may subscribe to an

2 organizational instrument in writing for the purpose of forming a
3 family trust company, subject to the conditions prescribed by law.

4 2. The organizational instrument of a family trust company shall
5 set forth all of the information required under chapters 347 or 351, as
6 applicable, and the following:

7 (1) The name of the company, which shall distinguish the
8 company from any other nonfamily trust company or family trust
9 company formed or engaging in business in this state. If the word
10 "trust" is included in the name, it shall be immediately preceded by the
11 word "family" so as to distinguish the entity from a nonfamily trust
12 company operating under this chapter. This subdivision shall not apply
13 to a foreign family trust company using a fictitious name that is
14 registered and maintained in this state pursuant to the requirements
15 administered by the secretary and that distinguishes the foreign family
16 trust company from a nonfamily trust company authorized to operate
17 under this chapter;

18 (2) The purpose for which the company is formed, which shall
19 clearly identify the restricted activities permissible to a family trust
20 company under sections 362.1010 to 362.1117; and

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

23 3. The term "trust company" in the name adopted by a family
24 trust company shall not violate section 362.425.

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

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

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

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

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

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

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

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

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

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

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

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

25 **(2) The current telephone number and street address of the**
26 **foreign family trust company's principal place of business in the**

27 jurisdiction in which it was incorporated or organized;

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

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

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

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

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

41 4. An annual registration report shall be submitted on a form
42 prescribed by the secretary and signed under penalty of perjury by an
43 authorized representative.

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

3 (1) Act as a sole or co-personal representative, executor, or
4 administrator for a probate estate within or outside this state;

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

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

18 (4) Exercise the powers of a corporation or limited liability
19 company incorporated or organized under the laws of this state, or
20 qualified to transact business as a foreign corporation or limited

21 liability company under the laws of this state that are reasonably
22 necessary to enable the trust company to fully exercise a power
23 conferred under sections 362.1010 to 362.1117 in accordance with
24 commonly accepted customs and usages;

25 (5) Delegate duties and powers, including investment and
26 management functions under section 469.909, in accordance with the
27 powers granted to a trustee under chapter 456 or other applicable law
28 and retain agents, attorneys, accountants, investment advisors, or other
29 individuals or entities to advise or assist the family trust company in
30 the exercise of its powers and duties under sections 362.1010 to
31 362.1117 and chapter 456. Such exercise of power may include, but is
32 not limited to, retaining a bank trust department or a public trust
33 company other than another family trust company; and

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

37 2. A foreign family trust company in good standing in the
38 jurisdiction in which it is incorporated or organized may exercise all
39 the trust powers in this state that a Missouri family trust company may
40 exercise.

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

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

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

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

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

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

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

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

23 (a) The family trust company;

24 (b) A family affiliate; or

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

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

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

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

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

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

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

47 (b) Any fee or other compensation received or reasonably
48 expected to be received by the family trust company as a result of the

49 transaction or services provided to an investment company; and

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

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

57 (1) Is negotiated at a fair price;

58 (2) Is in accordance with:

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

61 (b) The purposes of the trust; and

62 (3) Otherwise complies with:

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

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

67 7. Notwithstanding subsections 1 through 6 of this section, no
68 family trust company shall, while acting as a fiduciary, purchase a
69 bond or security issued by the family trust company, its parent, or a
70 subsidiary company of either unless:

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

72 (a) The terms of the instrument creating the trust for which such
73 purchase is made;

74 (b) A court order;

75 (c) The written consent of the settlor of such trust for which the
76 family trust company is serving as trustee; or

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

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

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

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

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

97 **(3) Enter into an agreement with a family member who is the**
98 **settlor or a qualified beneficiary of a trust with respect to the**
99 **appointment of the family trust company as a fiduciary of the trust or**
100 **with respect to the compensation of the family trust company for**
101 **service as a fiduciary;**

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

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

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

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

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

114 **9. If not inconsistent with and subject to the terms of subsections**
115 **4 through 8 of this section, the duty of loyalty under section 456.8-802**
116 **applies to a family trust company when the family trust company serves**
117 **as trustee of a trust whose administration is subject to chapter 456.**

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

6 shall make and, if required, subscribe to such oath, affirmation,
7 affidavit, or acknowledgment on behalf of the company.

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

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

4 2. The secretary or the secretary's designee may examine or
5 investigate a family trust company at any time the secretary deems
6 necessary to determine if the family trust company engaged in an act
7 prohibited under section 362.1065 or 362.1080 and, if a family trust
8 company engaged in such act, to determine whether any other
9 applicable law was violated.

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

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

34 administrative fine of up to one thousand dollars per day for each day
35 the payment is overdue.

36 5. The secretary may establish by rule the requirements and
37 records necessary to demonstrate conformity with sections 362.1010 to
38 362.1117 by a family trust company.

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

7 (1) The family trust company fails to satisfy the requirements of
8 a family trust company or foreign family trust company under sections
9 362.1010 to 362.1117;

10 (2) A violation of section 362.1035, 362.1040, 362.1050, 362.1055,
11 362.1060, or 362.1080;

12 (3) A violation of any rule of the secretary;

13 (4) A violation of any order of the secretary;

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

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

16 (7) A willful failure to provide information or documents to the
17 secretary upon written request;

18 (8) An act of commission or omission that is judicially
19 determined by a court of competent jurisdiction to be a breach of trust
20 or fiduciary duty; or

21 (9) A violation of state or federal law related to anti-money
22 laundering, customer identification, or any related rule or regulation.

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

25 3. If no hearing is requested within thirty days after the date of
26 service of the notice of charges or if a hearing is held and the secretary
27 or secretary's designee finds that any of the charges are true, the
28 secretary or secretary's designee may enter an order directing the
29 family trust company, family trust company affiliated party, or the
30 individual named in the notice of charges to cease and desist such
31 conduct and to take corrective action.

32 4. A contested or default cease and desist order is effective when

33 reduced to writing and served upon the family trust company, family
34 trust company affiliated party, or the individual named therein. An
35 uncontested cease and desist order is effective as agreed.

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

51 6. A family trust company shall have ninety days to wind up its
52 affairs after entry of any order to cease and desist from operating as a
53 family trust company. If a family trust company that is not a foreign
54 family trust company is still operating after ninety days, the secretary
55 or the secretary's designee may seek an order from a circuit court for
56 the annulment or dissolution of the company. If a foreign family trust
57 company is still operating after ninety days, the secretary or the
58 secretary's designee may seek an injunction from a circuit court
59 restraining the company from continuing to operate in this state.

 362.1095. If a family trust company fails to submit within the
2 prescribed period its annual registration report or any other report
3 required by sections 362.1010 to 362.1117 or rule, the secretary may
4 impose a fine of up to one hundred dollars for each day that the annual
5 registration report or other report is overdue. Failure to provide the
6 annual registration report within sixty days after the end of the
7 calendar year shall automatically result in termination of the
8 registration of a family trust company. A family trust company may
9 have its registration automatically reinstated by submitting to the
10 secretary, on or before August thirty-first of the calendar year in which

11 the annual registration report is due, the company's annual registration
12 report, a five hundred dollar late fee, and the amount of any fine
13 imposed by the secretary under this section. A family trust company
14 that fails to renew or reinstate its registration shall wind up its affairs
15 on or before November thirtieth of the calendar year in which such
16 failure occurs.

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

6 (1) Demonstrates that the family trust company does not satisfy
7 the requirements of a family trust company or of a foreign family trust
8 company under sections 362.1010 to 362.1117;

9 (2) Is a prohibited act or practice under section 362.1065;

10 (3) Violates section 362.1035, 362.1040, 362.1050, 362.1055,
11 362.1060, or 362.1080;

12 (4) Violates any other law involving fraud or moral turpitude
13 that constitutes a felony;

14 (5) Violates a state or federal law related to anti-money
15 laundering, customer identification, or any related rule or regulation;

16 (6) Is a willful violation of a rule of the secretary;

17 (7) Is a willful violation of an order of the secretary;

18 (8) Is a willful breach of a written agreement with the secretary;

19 or

20 (9) Is an act of commission or omission or a practice that the
21 secretary or the secretary's designee has reason to believe is a breach
22 of trust or fiduciary duty.

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

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

32 trust company.

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

37 5. (1) The chief executive officer of a family trust company or
38 the person holding the equivalent office shall promptly notify the
39 secretary if such person has actual knowledge that a family trust
40 company affiliated party is charged with a felony in a state or federal
41 court.

42 (2) If a family trust company affiliated party is charged with a
43 felony in a state or federal court or, in a court of a foreign country with
44 which the United States maintains diplomatic relations, is charged with
45 an offense that involves a violation of law relating to fraud, currency
46 transaction reporting, money laundering, theft, or moral turpitude and
47 such offense is equivalent to a felony charge under state or federal law,
48 then the secretary or the secretary's designee may enter an emergency
49 order that suspends the family trust company affiliated party or that
50 restricts or prohibits participation by such party in the affairs of the
51 family trust company effective upon service of the order on the
52 company and such family trust company affiliated party.

53 (3) The order shall contain notice of opportunity for a hearing,
54 at which the family trust company affiliated party may request a
55 post-suspension hearing to show that continued service to or
56 participation in the affairs of the family trust company does not pose
57 a threat to the interests of the family trust company. In accordance
58 with applicable rules, the secretary or secretary's designee shall notify
59 the family trust company affiliated party whether the order suspending
60 or prohibiting the family trust company affiliated party from
61 participating in the affairs of the family trust company will be
62 rescinded or otherwise modified. The emergency order shall remain in
63 effect, unless otherwise modified by the secretary or secretary's
64 designee, until the criminal charge is disposed. The emergency order
65 shall dissolve upon the final, unappealed dismissal of all charges
66 against or the acquittal of the family trust company affiliated
67 party. Such occurrences shall not prohibit the secretary or the
68 secretary's designee from instituting proceedings under subsection 1

69 of this section. If the family trust company affiliated party charged is
70 convicted or pleads guilty or nolo contendere, regardless of
71 adjudication, the emergency order shall become final.

72 6. No family trust company affiliated party removed from office
73 under this section shall be eligible for reinstatement to such office or
74 to any other official position in a family trust company or financial
75 institution in this state except with the written consent of the
76 secretary. A family trust company affiliated party who is removed,
77 restricted, or prohibited from participation in the affairs of a family
78 trust company under this section may petition the secretary for
79 modification or termination of such removal, restriction, or prohibition.

80 7. The resignation, termination of employment or participation,
81 or separation from a family trust company of the family trust company
82 affiliated party shall not affect the jurisdiction and authority of the
83 secretary or the secretary's designee to issue a notice and proceed
84 under this section against the family trust company affiliated party if
85 such notice is served within six years of the date such person ceased to
86 be a family trust company affiliated party.

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

4 (1) To the secretary or the secretary's authorized representative;

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

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

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

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

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

19 2. (1) If a corporation, each customer and stockholder, or, if a

20 limited liability company, each member has the right to inspect the
21 books and records of a family trust company as they pertain to such
22 person's accounts or the determination of such person's voting rights.

23 (2) The books and records pertaining to customers, members, and
24 stockholders of a family trust company shall be kept confidential by the
25 company and its directors, managers, officers, and employees. The
26 books and records of customers, members, and stockholders shall not
27 be released except upon the express authorization of the customer as
28 to his or her own accounts or a stockholder or member regarding his
29 or her voting rights. However, information may be released without
30 the authorization of a customer, member, or shareholder in a manner
31 prescribed by the board of directors of a corporation or managers of a
32 limited liability company for the purposes of verifying or corroborating
33 the existence or amount of a customer's account if such information is
34 reasonably provided to meet the needs of commerce and to ensure
35 accurate credit information. Notwithstanding this subdivision, this
36 subsection shall not prohibit a family trust company from disclosing
37 financial information as permitted under 15 U.S.C. Section 6802, as
38 amended.

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

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

45 3. For purposes of this section, the term "books and records" shall
46 include, but is not limited to, the initial registration documents of a
47 family trust company under section 362.1030 and the annual
48 registration report made by a family trust company under section
49 362.1055.

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

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

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

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

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

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

16 (1) Examination reports;

17 (2) Investigatory records;

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

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

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

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

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

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

6 (2) Any personal identifying information appearing in records

7 relating to an examination of a family trust company;

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

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

13 (5) Information received by the secretary from a person from
14 another state or nation or the federal government that is otherwise
15 confidential or exempt under the laws of such state or nation or under
16 federal law; and

17 (6) An emergency cease and desist order issued under section
18 362.1090 until the emergency order is made permanent, unless the
19 secretary finds that such confidentiality will result in substantial risk
20 of financial loss to the public.

21 2. Information made confidential and exempt under subsection
22 1 of this section may be disclosed by the secretary to:

23 (1) The authorized representative or representatives of the
24 family trust company under examination. The authorized
25 representative or representatives shall be identified in a resolution or
26 by written consent of the board of directors if a corporation or the
27 managers if a limited liability company;

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

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

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

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

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

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

44 **(8) Comply with a legislative subpoena. A legislative body or**
45 **committee that receives records or information pursuant to such**
46 **subpoena shall maintain the confidential status of such records or**
47 **information. However, in a case involving the investigation of charges**
48 **against a public official subject to impeachment or removal, records or**
49 **information may be disclosed to the extent necessary as determined by**
50 **the legislative body or committee.**

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

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

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

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

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

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

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

362.1118. If any provision of sections 362.1010 to 362.1117 or its
2 **application to any person or circumstances is held invalid, the**
3 **invalidity does not affect other provisions or applications of sections**
4 **362.1010 to 362.1117 that can be given effect without the invalid**
5 **provision or application, and to this end the provisions of sections**
6 **362.1010 to 362.1117 are severable.**

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