

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1098

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CRAWFORD.

2438H.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 362.600, RSMo, and to enact in lieu thereof one new section relating to trust companies.

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

Section A. Section 362.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 362.600, to read as follows:

362.600. 1. The term "out-of-state bank or trust company", as used in this section, shall mean:

(1) Any bank or trust company now or hereafter organized under the laws of any state of the United States other than Missouri; and

(2) Any national banking association or any thrift institution under the jurisdiction of the office of [thrift supervision] **the comptroller of the currency** having its principal place of business in any state of the United States other than Missouri.

2. Except as provided in subsection 6 of this section, any out-of-state bank or trust company may act in this state as trustee, executor, administrator, guardian, or in any other like fiduciary capacity, without the necessity of complying with any law of this state relating to the licensing of foreign banking corporations by the director of finance or relating to the qualifications of foreign corporations to do business in this state, and notwithstanding any prohibition, limitation or restriction contained in any other law of this state, provided only that:

(1) The out-of-state bank or trust company is authorized to act in this fiduciary capacity or capacities in the state in which it is incorporated, or, if the out-of-state bank or trust company

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.

16 be a national banking association, or a thrift institution, it is authorized to act in this fiduciary
17 capacity or capacities in the state in which it has its principal place of business; and

18 (2) Any bank or other corporation organized under the laws of this state or a national
19 banking association or thrift institution having its principal place of business in this state may
20 act in these fiduciary capacities in that state without further showing or qualification, other than
21 that it is authorized to act in these fiduciary capacities in this state, compliance with minimum
22 capital, bonding, or securities pledge requirements applicable to all banks and trust companies
23 doing business in that state, and compliance with any law of that state concerning service of
24 process:

25 (a) Which may require the appointment of an official or other person for the receipt of
26 process; or

27 (b) Which contains provisions to the effect that any bank or trust company which is not
28 incorporated under the laws of that state, or if a national bank or thrift institution then which does
29 not have its principal place of business in that state, acting in that state in a fiduciary capacity
30 pursuant to provisions of law making it eligible to do so, shall be deemed to have appointed an
31 official of that state to be its true and lawful attorney upon whom may be served all legal process
32 in any action or proceeding against it relating to or growing out of any trust, estate or matter in
33 respect of which the entity has acted or is acting in that state in this fiduciary capacity, and that
34 the acceptance of or engagement in that state in any acts in this fiduciary capacity shall be
35 deemed its agreement that the process against it, which is so served, shall be of the same legal
36 force and validity as though served upon it personally, or which contains any substantially
37 similar provisions.

38 3. Any out-of-state bank or trust company eligible to act in any fiduciary capacity in this
39 state pursuant to the provisions of this section may so act whether or not a resident of this state
40 be acting with it in this capacity, may use its corporate name in connection with such activity in
41 this state, and may be appointed to act in this fiduciary capacity by any court having jurisdiction
42 in the premises, all notwithstanding any provision of law to the contrary. Nothing in this section
43 contained shall be construed to prohibit or make unlawful any activity in this state by a bank or
44 trust company which is not incorporated under the laws of this state, or if a national bank or thrift
45 institution then which does not have its principal place of business in this state, which would be
46 lawful in the absence of this section.

47 4. Except as provided in subsection 6 of this section, prior to the time when any
48 out-of-state bank or trust company acts pursuant to the authority of this section in any fiduciary
49 capacity or capacities in this state, the out-of-state bank or trust company shall file with the
50 director of finance a written application for a certificate of reciprocity and the director of finance
51 shall issue the certificate to the out-of-state bank or trust company. The application shall state:

- 52 (1) The correct corporate name of the out-of-state bank or trust company;
- 53 (2) The name of the state under the laws of which it is incorporated, or if the out-of-state
54 bank or trust company is a national banking association or thrift institution shall state that fact;
- 55 (3) The address of its principal business office;
- 56 (4) In what fiduciary capacity or capacities it desires to act, in the state of Missouri;
- 57 (5) **Whether the out-of-state bank or trust company intends to establish a trust**
58 **representative office, facility, branch, or other physical location in the state of Missouri and**
59 **the activities to be conducted at such office, facility, branch, or location;**
- 60 (6) That it is authorized to act in a similar fiduciary capacity or capacities in the state in
61 which it is incorporated, or, if it is a national banking association, in which it has its principal
62 place of business;
- 63 ~~[(6)]~~ (7) That the application shall constitute the irrevocable appointment of the director
64 of finance of Missouri as its true and lawful attorney to receive service of all legal process in any
65 action or proceeding against it relating to or growing out of any trust, estate or matter in respect
66 of which the out-of-state bank or trust company may act in this state in the fiduciary capacity
67 pursuant to the certificate of reciprocity applied for;
- 68 ~~[(7)]~~ (8) Unless the out-of-state bank or trust company verifies to the director of the
69 division of finance that it satisfies capital requirements equal to the new charter requirement for
70 a Missouri trust company or that it maintains a bond for the faithful performance of all its
71 fiduciary activities equivalent to the Missouri capital requirements, the director may require the
72 applicant to submit a bond issued by a surety company authorized to do business in the state of
73 Missouri in the minimum amount of one million dollars in a form or such greater amount
74 acceptable to the director of the division of finance. The surety bond shall secure the faithful
75 performance of the fiduciary obligations of the out-of-state bank or trust company in Missouri.
76 The application shall be verified by an officer of the out-of-state bank or trust company, and
77 there shall be filed with it such certificates of public officials and copies of documents certified
78 by public officials as may be necessary to show that the out-of-state bank or trust company is
79 authorized to act in a fiduciary capacity or capacities similar to those in which it desires to act
80 in the state of Missouri, in the state in which it is incorporated, or, if it is a national banking
81 association in which it has its principal place of business. The director of finance shall,
82 thereupon, if the out-of-state bank or trust company is one which may act in the fiduciary
83 capacity or capacities as provided in subsection 2 of this section, issue to the entity a certificate
84 of reciprocity, retaining a duplicate thereof together with the application and accompanying
85 documents in his or her office. The certificate of reciprocity shall recite and certify that the
86 out-of-state bank or trust company is eligible to act in this state pursuant to this section and shall

87 recite the fiduciary capacity or capacities in which the out-of-state bank or trust company is
88 eligible so to act.

89 5. A certificate of reciprocity issued to any out-of-state bank or trust company shall
90 remain in effect until the out-of-state bank or trust company shall cease to be entitled under
91 subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by
92 the certificate, and thereafter until revoked by the director of finance. If at any time the
93 out-of-state bank or trust company shall cease to be entitled under subsection 2 of this section
94 to act in this state in the fiduciary capacity or capacities covered by the certificate, the director
95 of finance shall revoke the certificate and give written notice of the revocation to the out-of-state
96 bank or trust company. No revocation of any certificate of reciprocity shall affect the right of
97 the out-of-state bank or trust company to continue to act in this state in a fiduciary capacity in
98 estates or matters in which it has theretofore begun to act in a fiduciary capacity pursuant to the
99 certificate.

100 6. An out-of-state bank or trust company shall not establish or maintain [in this state a
101 place of business, branch office or agency for the conduct] **a trust representative office,**
102 **facility, branch, or other physical location** in this state [of] **for the conduct of** business as a
103 fiduciary unless:

104 (1) The out-of-state bank or trust company is under the control of a Missouri bank or a
105 Missouri bank holding company, as these terms are defined in section 362.925, and the
106 out-of-state bank or trust company has complied with the requirements relating to the
107 qualifications of out-of-state bank or trust company to do business in this state;

108 (2) The out-of-state bank or trust company is a bank, trust company or national banking
109 association in good standing that possesses fiduciary powers from its chartering authority and
110 is the surviving corporation to a merger or consolidation with a national banking association
111 located in Missouri or a Missouri bank or trust company **or is otherwise authorized by federal**
112 **law to establish a branch in Missouri.** The provisions of this subdivision are enacted to
113 implement subsection 2 of this section and section 362.610, and the provisions of Title 12,
114 U.S.C. 36[(f)(2)] of the National Bank Act **and other applicable federal law;** or

115 (3) The out-of-state bank or trust company is a state-chartered bank, savings and loan
116 association, trust company, national banking association, or thrift institution in good standing
117 that possesses fiduciary powers and has received a certificate of reciprocity, in which case it may
118 [only] open a trust representative office, **facility, branch, or other physical location** in Missouri
119 [which is not otherwise a branch of such out-of-state bank or trust company], provided a bank,
120 savings and loan association or trust company chartered under the laws of Missouri and a
121 national bank or thrift institution with its principal location in Missouri, all with fiduciary
122 powers, are permitted to open and operate **such** a trust representative office, **facility, branch,**

123 **or other physical location** under the same or less restrictive conditions in the state in which the
124 out-of-state bank or trust company is organized or has its principal office.

125 7. An out-of-state bank or trust company, insofar as it acts in a fiduciary capacity in this
126 state pursuant to the provisions of this section, shall not be deemed to be transacting business in
127 this state, if the out-of-state bank or trust company does not establish or maintain in this state a
128 place of business, branch office, or agency for the conduct in this state of business as a fiduciary.

129 8. Every out-of-state bank or trust company to which a certificate of reciprocity shall
130 have been issued shall be deemed to have appointed the director of finance to be its true and
131 lawful attorney upon whom may be served all legal process in any action or proceeding against
132 it relating to or growing out of any trust, estate or matter in respect of which the out-of-state bank
133 or trust company acts in this state in any fiduciary capacity pursuant to the certificate of
134 reciprocity. Service of the process shall be made by delivering a copy of the summons or other
135 process, with a copy of the petition when service of the copy is required by law, to the director
136 of finance or to any person in his or her office authorized by him to receive the service. The
137 director of finance shall immediately forward the process, together with the copy of the petition,
138 if any, to the out-of-state bank or trust company, by registered mail, addressed to it at the address
139 on file with the director, or if there be none on file then at its last known address. The director
140 of finance shall keep a permanent record in his or her office showing for all **such** process served,
141 the style of the action or proceeding, the court in which it was brought, the name and title of the
142 officer serving the process, the day and hour of service, and the day of mailing by registered mail
143 to the out-of-state bank or trust company and the address to which mailed. In case the process
144 is issued by a court, the same may be directed to and served by any officer authorized to serve
145 process in the city or county where the director of finance shall have his or her office, at least
146 fifteen days before the return thereof. **If an out-of-state bank or trust company has**
147 **established a trust representative office, trust facility, branch, or other physical location**
148 **in the state of Missouri, that bank or trust company may also be served legal process at any**
149 **such location by service upon any officer, agent, or employee at that location.**

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