

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1098
98TH GENERAL ASSEMBLY

2438S.02T

2015

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Section A. Section 362.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 362.600, to read as follows: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] **subsections 4 and 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:

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.

15 (1) The out-of-state bank or trust company is authorized to act in this fiduciary capacity
16 or capacities in the state in which it is incorporated, or, if the out-of-state bank or trust company
17 be a national banking association, or a thrift institution, it is authorized to act in this fiduciary
18 capacity or capacities in the state in which it has its principal place of business; and

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

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

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

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

48 4. Except as provided in subsection 6 of this section, prior to the time when any
49 out-of-state bank or trust company acts pursuant to the authority of this section in any fiduciary
50 capacity or capacities in this state, the out-of-state bank or trust company shall file with the

51 director of finance a written application for a certificate of reciprocity and the director of finance
52 shall issue the certificate to the out-of-state bank or trust company. The application shall state
53 **the information set forth in the following subdivisions (1) to (7), and the out-of-state bank**
54 **or trust company shall be subject to the following subdivisions (8) to (10):**

55 (1) The correct corporate name of the out-of-state bank or trust company;

56 (2) The name of the state under the laws of which it is incorporated, or if the out-of-state
57 bank or trust company is a national banking association or thrift institution shall state that fact;

58 (3) The address of its principal business office;

59 (4) In what fiduciary capacity or capacities it desires to act, in the state of Missouri;

60 (5) **Whether the out-of-state bank or trust company intends to establish a trust**
61 **representative office, facility, branch, or other physical location in the state of Missouri and**
62 **the activities to be conducted at such office, facility, branch, or location;**

63 (6) That it is authorized to act in a similar fiduciary capacity or capacities in the state in
64 which it is incorporated, or, if it is a national banking association, in which it has its principal
65 place of business;

66 [(6)] (7) That the application shall constitute the irrevocable appointment of the director
67 of finance of Missouri as its true and lawful attorney to receive service of all legal process in any
68 action or proceeding against it relating to or growing out of any trust, estate or matter in respect
69 of which the out-of-state bank or trust company may act in this state in the fiduciary capacity
70 pursuant to the certificate of reciprocity applied for;

71 [(7)] (8) **Subject to subdivision (10) of this subsection** unless the out-of-state bank or
72 trust company verifies to the director of the division of finance that it satisfies capital
73 requirements equal to the new charter requirement for a Missouri trust company or that it
74 maintains a bond for the faithful performance of all its fiduciary activities equivalent to the
75 Missouri capital requirements, the director may require the applicant to submit a bond issued by
76 a surety company authorized to do business in the state of Missouri in the minimum amount of
77 one million dollars in a form or such greater amount acceptable to the director of the division of
78 finance. The surety bond shall secure the faithful performance of the fiduciary obligations of the
79 out-of-state bank or trust company in Missouri.

80 (9) The application shall be verified by an officer of the out-of-state bank or trust
81 company, and there shall be filed with it such certificates of public officials and copies of
82 documents certified by public officials as may be necessary to show that the out-of-state bank
83 or trust company is authorized to act in a fiduciary capacity or capacities similar to those in
84 which it desires to act in the state of Missouri, in the state in which it is incorporated, or, if it is
85 a national banking association in which it has its principal place of business. The director of
86 finance shall, thereupon, if the out-of-state bank or trust company is one which may act in the

87 fiduciary capacity or capacities as provided in subsection 2 of this section, issue to the entity a
88 certificate of reciprocity, retaining a duplicate thereof together with the application and
89 accompanying documents in his or her office. The certificate of reciprocity shall recite and
90 certify that the out-of-state bank or trust company is eligible to act in this state pursuant to this
91 section and shall recite the fiduciary capacity or capacities in which the out-of-state bank or trust
92 company is eligible so to act.

93 **(10) Notwithstanding subdivision (8) of this subsection, to facilitate interstate**
94 **reciprocity under this section, the director may enter a memorandum of understanding**
95 **with the bank or trust company regulator of another jurisdiction to accept the capital**
96 **requirements of that jurisdiction in lieu of the Missouri minimum capital or bond**
97 **requirements set forth in subdivision (8) of this subsection and establish such other terms**
98 **to assure reciprocal interstate treatment for Missouri chartered bank or trust companies**
99 **in that jurisdiction.**

100 5. A certificate of reciprocity issued to any out-of-state bank or trust company shall
101 remain in effect until the out-of-state bank or trust company shall cease to be entitled under
102 subsection 2 of this section to act in this state in the fiduciary capacity or capacities covered by
103 the certificate, and thereafter until revoked by the director of finance. If at any time the
104 out-of-state bank or trust company shall cease to be entitled under subsection 2 of this section
105 to act in this state in the fiduciary capacity or capacities covered by the certificate, the director
106 of finance shall revoke the certificate and give written notice of the revocation to the out-of-state
107 bank or trust company. No revocation of any certificate of reciprocity shall affect the right of
108 the out-of-state bank or trust company to continue to act in this state in a fiduciary capacity in
109 estates or matters in which it has theretofore begun to act in a fiduciary capacity pursuant to the
110 certificate.

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

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

119 (2) The out-of-state bank or trust company is a bank, trust company or national banking
120 association in good standing that possesses fiduciary powers from its chartering authority and
121 is the surviving corporation to a merger or consolidation with a national banking association
122 located in Missouri or a Missouri bank or trust company **or is otherwise authorized by federal**

123 **law to establish a branch in Missouri.** The provisions of this subdivision are enacted to
124 implement subsection 2 of this section and section 362.610, and the provisions of Title 12,
125 U.S.C. 36[(f)(2)] of the National Bank Act **and other applicable federal law;** or

126 (3) The out-of-state bank or trust company is a state-chartered bank, savings and loan
127 association, trust company, national banking association, or thrift institution in good standing
128 that possesses fiduciary powers and has received a certificate of reciprocity, in which case it may
129 [only] open a trust representative office, **facility, branch, or other physical location** in Missouri
130 [which is not otherwise a branch of such out-of-state bank or trust company], provided a bank,
131 savings and loan association or trust company chartered under the laws of Missouri and a
132 national bank or thrift institution with its principal location in Missouri, all with fiduciary
133 powers, are permitted to open and operate **such** a trust representative office, **facility, branch,**
134 **or other physical location** under the same or less restrictive conditions in the state in which the
135 out-of-state bank or trust company is organized or has its principal office.

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

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

159 **in the state of Missouri, that bank or trust company may also be served legal process at any**
160 **such location by service upon any officer, agent, or employee at that location.**

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