

ORIGINAL HOUSE
BILL NO. HB0061

ENROLLED ACT NO. 55, HOUSE OF REPRESENTATIVES

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2015 GENERAL SESSION

AN ACT relating to banks, banking and finance; creating the Wyoming Chartered Family Trust Company Act; creating requirements for chartered family trust companies; providing for fees; establishing a statute of limitations for legal actions; requiring the posting of bonds with the state banking commissioner; providing for inspection of the records of a chartered family trust company; providing for the conversion of a trust company to a chartered family trust company; requiring reports to the state banking commissioner; creating a resolution fund account; providing contributions to the resolution fund account; providing rulemaking authority; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 13-5-201 through 13-5-219 are created to read:

ARTICLE 2
CHARTERED FAMILY TRUST COMPANY ACT

13-5-201. Short title.

This act may be cited as the "Wyoming Chartered Family Trust Company Act."

13-5-202. Purpose.

(a) The purpose of this act is to:

(i) Encourage family trust companies to charter with the commissioner;

(ii) Define those persons who are engaged in or who desire to provide fiduciary services to a single family and its related interests as a chartered family trust

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company, and who are not doing trust company business with the public or offering services to the general public; and

(iii) Bring under public supervision the benefits of being chartered pursuant to the provisions of this act.

13-5-203. Applicability.

Except as otherwise provided in this article, a chartered family trust company is subject to the provisions of Wyoming statutes, title 13, chapter 5.

13-5-204. Definitions.

(a) As used in this article:

(i) "Board member" means:

(A) In the case of a corporation, a director of the corporation;

(B) In the case of a limited liability company, the manager of the limited liability company.

(ii) "Chartered family trust company" means a family trust company chartered by the state of Wyoming pursuant to this act;

(iii) "Collateral kinship" means a relationship that is not lineal, but stems from a common ancestor;

(iv) "Designated relative" means the common ancestor of the family, who may be either living or deceased. With regard to a chartered family trust company or a family trust company applying to be chartered pursuant

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to this act, the designated relative is the person who is designated in the application for a charter under this act;

(v) "Family affiliate" means a company or other entity, including charitable nonprofit organizations, charitable foundations, charitable trusts, or other charitable organizations, with respect to which one (1) or more family members or affiliates own, directly or indirectly, one hundred percent (100%) of the company or entity or possess, directly or indirectly, the power to direct or cause the direction of the management and policies of that company or entity, whether through the ownership of voting securities, by contract, power of direction or otherwise;

(vi) "Family member" means, without limitation, a designated relative and:

(A) Any person within the tenth degree of lineal kinship of the designated relative;

(B) Any person within the ninth degree of collateral kinship to the designated relative;

(C) The spouse and any former spouse of the designated relative or of any person qualifying as a family member pursuant to subparagraph (A) or (B) of this paragraph;

(D) A person who is a relative of a spouse or former spouse specified in subparagraph (C) of this paragraph who is within the fifth degree of lineal kinship of the spouse or former spouse;

(E) A family affiliate;

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(F) A trust established by a family member either individually or jointly with a spouse and any trustee, advisor or other person assisting with administration of that trust, if funded by one (1) or more family members;

(G) A trust of which each trustee or other person authorized to make decisions with respect to the trust and each settlor is a family member;

(H) Does not include a member of the public;

(J) For purposes of this definition:

(I) A legally adopted person shall be treated as a natural child of the adoptive parents;

(II) A stepchild shall be treated as a natural child of the family member who is or was the stepparent of that child;

(III) A foster child or an individual who was a minor when a family member became his or her legal guardian shall be treated as a natural child of the family member appointed as foster parent or guardian;

(IV) Children of a spouse of a family member shall be treated as a natural child of that family member; and

(V) Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly, in case of lineal kinship, or through the common ancestor, in the case of collateral kinship.

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(vii) "Family trust company" means a corporation or limited liability company that:

(A) Acts or proposes to act as a fiduciary;

(B) Is organized or qualified to do business in this state to serve family members;

(C) Does not transact trust company business with, propose to act as a fiduciary for or solicit trust company business with the general public; and

(D) Whose officers execute and deliver a signed waiver to the commissioner acknowledging that the family trust company is not regulated under this act and its members are not afforded any of the protections or privileges of this act.

(viii) "Governing board" means:

(A) In the case of a corporation, the board of directors of the corporation;

(B) In the case of a limited liability company, the manager of the limited liability company.

(ix) "Lineal kinship" means a family member who is in the direct line of ascent or descent from the designated kinship;

(x) "Officers, managers and directors of a family affiliate" means a natural person, including any officer, manager or director's spouse who holds a joint, community property or other similar shared ownership interest with that officer, manager or director, who is an executive officer, director, trustee, general partner or person serving in a similar capacity who, in connection

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with his or her regular functions or duties, participates in the investment activities of the company, provided that the employee has been performing functions and duties for or on behalf of the chartered family trust company for at least twelve (12) months;

(xi) "Organizational instrument" means the articles of incorporation for a corporation or the articles of organization for a limited liability company;

(xii) "Transact business with the general public" means engaging in any advertising, solicitations, arrangements, agreements or transactions to provide, accept and undertake to perform the duties as an executor, administrator, guardian, conservator or trustee in this state in the regular course of business;

(xiii) "Trust service office" means any office, agency or other place of business at which the powers granted to chartered family trust companies are exercised by the chartered family trust company other than the place of business specified in the chartered family trust company's charter.

13-5-205. Organization of a chartered family trust company.

(a) One (1) or more persons may subscribe to an organizational instrument in writing for the purpose of forming a chartered family trust company, subject to the conditions prescribed by law.

(b) The articles of incorporation for a chartered family trust company organized as a corporation shall set forth all of the information required by W.S. 17-16-202 and the following:

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(i) The corporate name, which shall comply with W.S. 13-5-207 and 17-16-401; and

(ii) A statement that the articles of incorporation are made to enable the shareholders to avail themselves of the advantages of this act.

(c) The articles of organization for a chartered family trust company organized as a limited liability company shall include the following information:

(i) The name of the limited liability company, which must comply with W.S. 13-5-207 and 17-29-108;

(ii) A statement that the articles of organization are made to enable the members to avail themselves of the advantage of this act.

(d) A chartered family trust company organized as a limited liability company shall be subject to all of the same laws and regulations that relate to a chartered family trust company organized as a corporation. All managers and employees of a chartered family trust company organized as a limited liability company shall be subject to the same duties and liabilities as pertain to directors, trustees and employees of a chartered family trust company organized as a corporation.

13-5-206. Requirements for chartered family trust company.

(a) A chartered family trust company shall maintain:

(i) A physical office in this state where original or true copies, including electronic copies, of all material business records and accounts of the chartered

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family trust company may be accessed and readily available for examination by the commissioner; and

(ii) A bank account with a state or nationally chartered bank or savings and loan association having a principal or branch office in this state.

13-5-207. Naming convention; advertisement of family trust company.

(a) No person or entity shall advertise, issue or circulate any paper or exhibit any sign, using the term "trust company" unless they have fully complied with this act or W.S. 13-5-101 through 13-5-113.

(b) No person or entity wishing to organize as a private family trust shall use the term "trust company" in its name without further specifying in its name that the company is a "private single family trust company" unless they have fully complied with this act or W.S. 13-5-101 through 13-5-113.

(c) Neither a family trust company nor a chartered family trust company formed and doing business under the laws of this state or any other state shall advertise its services to the public.

13-5-208. Minimum capital requirements; investment of capital.

The initial capital required to organize a chartered family trust company shall be not less than five hundred thousand dollars (\$500,000.00). The full amount of the initial capital must be paid in cash to the governing body of the chartered family trust company, exclusive of all organization expenses, before the chartered family trust company is authorized to commence business as a chartered

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family trust company. Once organized, a chartered family trust company shall maintain a minimum level of capital required by the commissioner to operate in a safe and sound manner based upon the commissioner's examination of the company, provided that the level of capital in a chartered family trust company shall not be less than five hundred thousand dollars (\$500,000.00).

13-5-209. Procedures upon filing of organizational instruments, application and other information; application fee; approval or disapproval of application; criteria for approval; action upon application.

(a) An applicant for a chartered family trust company charter must file an application with the commissioner on forms prescribed by the commissioner. The application must contain or be accompanied by such information as required pursuant to rules and regulations of the commissioner.

(b) The application filed with the commissioner shall be accompanied by a fee of ten thousand dollars (\$10,000.00) to cover the expense of the investigation by the commissioner. If an application to become a chartered family trust company is withdrawn by the applicant at any time prior to the granting of the charter, the statutory application filing fee, less the amount of any expense authorized above and actually incurred, shall be refunded to the applicant.

(c) The failure of the applicant to furnish required information, data, other material or the required fee within thirty (30) days after a written request from the commissioner may be considered a withdrawal of the application.

(d) Within forty-five (45) days after receipt of a completed application, the commissioner shall, in his

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discretion, approve, conditionally approve or disapprove the application. Prior to taking action on an application, the commissioner shall determine that:

(i) The chartered family trust company is being formed for no other purpose than the legitimate objects contemplated by the laws of this state;

(ii) The proposed capital and surplus are not less than the required minimum amount in W.S. 13-5-208 and are adequate in light of current and prospective conditions as determined by the commissioner;

(iii) The applicants, proposed officers and directors have sufficient character, reputation, experience, ability and financial standing to afford reasonable promise of successful operation;

(iv) The name of the proposed chartered family trust company does not resemble the name of any other chartered family trust company or financial institution transacting business in the state so closely as to cause confusion;

(v) The applicants have complied with all applicable provisions of law and such other facts and circumstances bearing on the proposed family trust company as the commissioner may reasonably deem relevant.

(e) The commissioner shall take action upon the application by stating findings of fact and conclusions of law.

(f) Upon approval of an application, the commissioner shall endorse upon the articles of organization or incorporation his approval and shall file one (1) copy of the application with the secretary of state, retain one (1)

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copy in his files and return one (1) copy to the applicant within twenty (20) days after the date of the decision of the commissioner approving the application. If the commissioner conditionally approves an application and the applicant complies with the conditions imposed by the commissioner, the commissioner shall approve the application and proceed in accordance with this section.

(g) Notice of the entry of an order refusing a charter or imposing conditions upon approval of the charter to a family trust company must be given in writing, served personally or sent by certified mail, return receipt requested, to the applicant. If the commissioner disapproves or imposes conditions upon the application, the commissioner shall mail notice of the action to the applicants within twenty (20) days after the commissioner's negative action. The company, upon appeal, is entitled to a hearing before the board pursuant to the Wyoming Administrative Procedure Act. If no such appeal is made within thirty (30) days after the entry of an order refusing a charter or imposing conditions upon the charter to any applicant, the commissioner shall enter a final order.

13-5-210. Powers of chartered family trust company and family trust company; banking business prohibited.

(a) A chartered family trust company or a family trust company may, but only for family members:

(i) Act or be appointed by any court within and outside this state to act as executor, administrator, guardian or conservator of estates of family members, assignee, receiver, depository, trustee, custodian or in any other fiduciary or representative capacity for family members for any purpose permitted by law;

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(ii) Act as transfer agent or registrar of corporate stocks and bonds of family affiliates;

(iii) Purchase, invest in and sell stocks, bonds, mutual funds, mortgages and other securities for the account of the family trusts;

(iv) Accept and execute any trust business of family members or family affiliates permitted by any law of this or any other state or of the United States to be taken, accepted or executed by an individual;

(v) Take oaths and execute affidavits by the oath or affidavit of its president, vice president, secretary, assistant secretary, manager, trust officer or assistant trust officer;

(vi) Make any lawful fiduciary investment as permitted by Wyoming Uniform Prudent Investor Act;

(vii) Perform all acts necessary to exercise the powers enumerated in this section.

(b) A chartered family trust company organized under this act or a family trust company shall not engage in:

(i) Any banking business by accepting general deposits or issuing demand instruments; or

(ii) Engage in trust company business with the public.

13-5-211. Authorized actions and transactions; conflicts of interest.

(a) In addition to the actions authorized by W.S. 13-5-210 and notwithstanding the provisions of any other

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law, while acting as a fiduciary of a trust, a chartered family trust company may:

(i) Invest in a security of an investment company or investment trust for which the chartered family trust company, or a family affiliate, provides services in a capacity other than as a fiduciary;

(ii) Place a security transaction using a broker that is a family affiliate;

(iii) Invest in an investment contract that is purchased from an insurance company or carrier owned by or affiliated with the chartered family trust company or a family affiliate;

(iv) Enter into an agreement with a beneficiary or grantor of a trust with respect to the appointment or compensation of the fiduciary or a family affiliate;

(v) Transact business with another trust, estate, guardianship or conservatorship for which the chartered family trust company is a fiduciary or in which a beneficiary has an interest;

(vi) Make an equity investment in a closely held entity that may or may not be marketable and that is owned or controlled, either directly or indirectly, by one (1) or more beneficiaries, family members or family affiliates;

(vii) Deposit trust money in a financial institution that is owned or operated by a family affiliate;

(viii) Delegate the authority to conduct any transaction or action pursuant to this section to an agent

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of the chartered family trust company or a family affiliate;

(ix) Purchase, sell, hold or invest in any security, bond, real or personal property, stock or other asset of a family affiliate;

(x) Loan money to or borrow money from:

(A) A family member of the trust or his or her legal representative;

(B) Another trust managed by the chartered family trust company; or

(C) A family affiliate.

(xi) Act as proxy in voting any shares of stock which are assets of the trust;

(xii) Exercise any powers of control with respect to any interest in a company that is an asset of the trust, including, without limitation, the appointment of officers or directors who are family affiliates; and

(xiii) Receive reasonable compensation for its services or the services of a family affiliate.

(b) A transaction or action authorized pursuant to subsection (a) of this section must:

(i) Be for a fair price, if applicable;

(ii) Be in the interest of the beneficiaries;
and

(iii) Comply with:

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(A) The terms of the trust instrument establishing the fiduciary relationship;

(B) A judgment, decree or court order;

(C) The written consent of each interested person.

(c) Except as otherwise provided in subsection (b) of this section, nothing in this section prohibits a chartered family trust company from transacting business with or investing in any asset of:

(i) A trust, estate, guardianship or conservatorship for which the chartered family trust company is a fiduciary;

(ii) A family affiliate; or

(iii) Any other company, agent, entity or person for which a conflict of interest may exist.

(d) A conflict of interest between the fiduciary duty and personal interest of a chartered family trust company does not void a transaction or action that:

(i) Complies with the provisions of this section; or

(ii) Occurred before the chartered family trust company entered into a fiduciary relationship pursuant to a trust instrument.

(e) A transaction by or action of a chartered family trust company authorized by this section is not voidable if:

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(i) The transaction or action was authorized by the terms of the trust;

(ii) The transaction or action was approved by a court or pursuant to a court order;

(iii) No interested person commenced a legal action relating to the transaction or action pursuant to subparagraph (b)(iii)(B) of this section;

(iv) The transaction or action was authorized by a valid consent agreement, release or pursuant to the issuance of a notice of proposed action issued pursuant to subparagraph (b)(iii)(C) of this section; or

(v) The transaction or action occurred before the chartered family trust company entered into a fiduciary relationship pursuant to a trust instrument.

(f) A legal action by an interested person alleging that a transaction or action by a chartered family trust company is voidable because of the existence of a conflict of interest must be commenced within one (1) year of the date on which the interested person discovered, or by the exercise of reasonable diligence should have discovered, the facts in support of his or her claim.

(g) Notwithstanding the provisions of any other law to the contrary, a chartered family trust company is not required to obtain court approval for any transaction that otherwise complies with the provisions of this section.

13-5-212. Financial transactions.

(a) Every chartered family trust company shall keep all trust funds and investments separate and apart from the

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assets of the company and all investments made by the company as a fiduciary shall be designated so that the trust or estate to which the investments belong may be clearly identified.

(b) Every chartered family trust company holding trust funds awaiting investment or distribution may deposit or leave on deposit the funds with a state or nationally chartered bank or savings and loan association or invest in other cash equivalent investments, including but not limited to uninsured money market funds or United States treasury bills with a duration of twelve (12) months or less. The funds shall not be deposited or left with the same corporation depositing or leaving on deposit such funds, nor with the corporation or association holding or owning a majority of the capital stock of the chartered family trust company making or leaving the deposit, unless the corporation or association shall first pledge, as security for the deposit, securities eligible for investment in state banks that have a market value equal to that of the deposited funds. No security shall be required with respect to any portion of such deposits which are insured under the provisions of any law of the United States.

(c) Every chartered family trust company acting in any capacity under a trust, unless the instrument creating the trust provides otherwise, may cause any securities or other property held by it in its representative capacity to be registered in the name of a nominee or nominees of the company.

(d) Every chartered family trust company when acting as depository or custodian for the fiduciary of a trust, unless the instrument creating the trust provides otherwise may with the consent of the fiduciary of the trust cause any securities or other property held by it to be

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registered in the name of the nominee or nominees of the company.

(e) Every chartered family trust company shall be liable for any loss occasioned by the acts of any of its nominees with respect to securities or other property registered under subsections (c) and (d) of this section.

(f) No corporation, or the registrar or transfer agent thereof, shall be liable for registering or causing to be registered on the books of the corporation any securities in the name of any nominee of a chartered family trust company or transferring or causing to be transferred on the books of the corporation any securities therefore registered by the corporation in the name of any nominee of a trust company, as provided in this section, when the transfer is made on the authorization of the nominee.

13-5-213. Powers of commissioner; rulemaking authority.

(a) In addition to other powers conferred by this act, the commissioner shall:

(i) Supervise and examine all chartered family trust companies organized under the provisions of this act. Chartered family trust companies shall also be subject to the laws of this state governing banks and other financial institutions in all cases where the laws do not conflict with the provisions of this act. In addition to the reports required under W.S. 13-5-110, all chartered family trust companies shall file with the commissioner an annual certificate of compliance with this act in a form prescribed by the commissioner;

(ii) Adopt reasonable rules and regulations and issue orders to implement the provisions of this act. In

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exercising the authority granted in this paragraph, the commissioner shall act in the interests of promoting and maintaining a sound trust company system, the security of assets and trust accounts and the protection of other customers;

(iii) Collect from each chartered family trust company subject to this section an amount equal to the total direct and indirect costs of the examination conducted. The fees and expenses collected shall be remitted to the state treasurer and credited to the financial institutions administration account. Expenditures from the account shall be made by warrants drawn by the state auditor, upon vouchers issued and signed by the director or the commissioner. Funds from the account shall be expended to carry out the duties of the commissioner or the board;

(iv) Determine and collect from each family trust company a fee in an amount equal to the total direct and indirect costs of providing any certificate, letter of assurance or other document requested by a family trust company stating that the family trust company has complied with W.S. 13-5-204(a)(vii)(D) and is not regulated under this act or any other law of the state of Wyoming.

13-5-214. Reports to commissioner.

(a) The commissioner may call for special reports verified under oath from any chartered family trust company at any time as necessary to inform the commissioner of the condition of the chartered family trust company.

(b) All reports required of chartered family trust companies by the commissioner under this act and all materials relating to examinations of chartered family

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trust companies under this act shall be subject to the provisions of W.S. 9-1-512.

13-5-215. Inspection of chartered family trust company; fees; resolution fund account; confidentiality.

(a) Every chartered family trust company is subject to inspection by the commissioner. The commissioner or a duly appointed examiner shall visit and examine each chartered family trust company as often as the commissioner deems necessary and at least once every three (3) years, with or without previous notice to the officers of or anyone interested in the chartered family trust company. The commissioner or a duly appointed examiner shall make a complete and careful examination of the condition and resources of the chartered family trust company, the mode of managing the company's affairs and conducting its business, all records, transactions and other data or documents pertaining to the actions of the family trust company, the action of its officers and directors in the investment and disposition of trust funds, the safety and prudence of the company's management, the security afforded to those by whom trust company engagements are held, whether the requirements of this act are being complied with and such other matters as the commissioner may prescribe.

(b) On or before January 31 of each year, a chartered family trust company shall compute and pay supervisory fees to the commissioner based on the total asset base of the chartered family trust company as of the preceding December 31. The supervisory fees shall be set by rule and regulation at an amount to provide for the supervision of the chartered family trust company as required by this act. Such fees shall be established by rules of the commissioner to assure consistency with the cost of supervision and the fees paid by chartered family trust companies. Other fees

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assessed for administrative services caused by applications or activities attributable to a specific family trust company shall be used to defray the cost of the special services and, to the extent possible, shall be recovered from the chartered family trust company that requires the special service.

(c) A portion of each chartered family trust company's supervisory fee shall be designated to the trust company resolution fund account created pursuant to subsection (e) of this section to be used by the commissioner in the event of involuntary dissolution of a chartered family trust company. Expenditures to cover the expenses incurred by the commissioner as a result of the involuntary dissolution of a chartered family trust company shall be made from the fund account by warrants drawn from the state auditor and signed by the commissioner or the director. The portion of the supervisory fee designated to the account shall be:

(i) Established and adjusted by rule and regulation of the commissioner; and

(ii) Remitted to the state treasurer for deposit to the trust company resolution fund account.

(d) All information, reports or applications obtained by the commissioner from an applicant or chartered family trust company are confidential.

(e) There is created the trust company resolution fund account. Funds in the account shall be expended as provided in subsection (c) of this section. Funds in the account are continuously appropriated to be expended for the purposes of this section.

13-5-216. Fidelity bonds; insurance.

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(a) The directors or managers of a chartered family trust company shall obtain fidelity bonds of not less than one million dollars (\$1,000,000.00) providing coverage for any active officers, managers, members acting in a managerial capacity and employees, whether or not they receive a salary or other compensation from the chartered family trust company, to indemnify the chartered family trust company against loss because of any dishonest, fraudulent or criminal act or omission by any of the persons bonded, acting alone or in combination with any other person. The bonds may be in any form and may be paid for by the chartered family trust company.

(b) A chartered family trust company may also procure property and casualty insurance of a nature and with such coverage amounts as the chartered family trust company deems advisable.

13-5-217. Conversion from trust company to chartered family trust company.

(a) A trust company that meets the requirements of W.S. 13-5-204(a)(vii), 13-5-206 and 13-5-208 may merge with, convert into or reorganize as a chartered family trust company upon application to the commissioner on forms approved by the commissioner.

(b) For trust companies established after July 1, 2015, seeking to convert from a trust company to a chartered family trust company, the application filed with the commissioner shall be accompanied by a fee of ten thousand dollars (\$10,000.00).

(c) Within thirty (30) days after receipt of a completed application, a trust company that meets the requirements of this section and is in good standing with

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the commissioner, shall be issued a charter as a chartered family trust company.

(d) The applicant shall be notified when the application is approved. Within twenty (20) days after notification, the applicant shall furnish the bonds required by W.S. 13-5-216(a).

13-5-218. Conversion from chartered family trust company to trust company.

A chartered family trust company following the procedure outlined in W.S. 13-5-102 through W.S. 13-5-105, and upon approval of the new charter and surrender of the family trust company charter, may be granted a charter as a trust company.

13-5-219. Establishment of trust service offices; application.

(a) After first applying for and obtaining the approval of the commissioner, one (1) or more trust service offices may be established and operated by a chartered family trust company organized under the laws of this state. An application to establish and operate a trust service office or to relocate an existing trust service office shall be submitted and approved by way of the procedure set forth in W.S. 13-5-209.

(b) A chartered family trust company may establish a trust service office in another state, territory or district and may conduct any activities at that office that are permissible for a trust company under the laws of that state, territory or district, subject to the laws of this state and subject to the rules and regulations of the commissioner.

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Section 2. This act is effective July 1, 2015.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk