

FIRST REGULAR SESSION

# HOUSE BILL NO. 1098

## 98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE CRAWFORD.

2438H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

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

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*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Section A. Section 362.600, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 362.600, to read as follows: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 be a national banking association, or a thrift institution, it is authorized to act in this fiduciary capacity or capacities in the state in which it has its principal place of business; and

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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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