

CHAPTER 99-145

Committee Substitute for Senate Bill No. 990

An act relating to trust powers; amending s. 660.41, F.S.; excluding certain banks or associations and trust companies from a prohibition against exercising certain powers and duties and acting within certain capacities in this state; providing an effective date.

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

Section 1. Section 660.41, Florida Statutes, is amended to read:

660.41 Corporations; certain fiduciary functions prohibited.—All corporations, ~~except banks or associations and trust companies incorporated under the laws of this state and having trust powers and except national banking associations or federal associations located in this state and having trust powers,~~ are prohibited from exercising any of the powers or duties and from acting in any of the capacities, within this state, as follows:

(1) As personal representative of the estate of any decedent, whether such decedent was a resident of this state or not, and whether the administration of the estate of such decedent is original or ancillary; however, if the personal representative of the estate of a nonresident decedent is a corporation duly authorized, qualified, and acting as such personal representative in the jurisdiction of the domicile of the decedent, it may as a foreign personal representative perform such duties and exercise such powers and privileges as are required, authorized, or permitted by s. 734.101.

(2) As receiver or trustee under appointment of any court in this state.

(3) As assignee, receiver, or trustee of any insolvent person or corporation or under any assignment for the benefit of creditors.

(4) As fiscal agent, transfer agent, or registrar of any municipal or private corporation, except that this prohibition shall not be so construed as to prevent banks, associations, and trust companies not located in this state from acting within the state where located as fiscal agent, transfer agent, or registrar of municipal or private corporations of this state. Nothing herein shall prevent any Florida corporation that is not a bank, association, or trust company and that does not have trust powers from being its own fiscal agent, transfer agent, or registrar concerning its own affairs, stock, or securities. Nothing herein shall prevent any Florida corporation or corporation having its principal place of business in Florida registered as a transfer agent with the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Securities and Exchange Commission from acting as a transfer agent for any other private corporation. Nothing in this section or in any other law of this state shall be construed to prohibit a foreign bank, foreign association, or foreign trust company as trustee of any charitable foundation or endowment, employees' pension, retirement or profit-sharing trust, alone or together with a cotrustee, from: making loans or committing to make loans to

any other person; contracting, in this state or elsewhere, with any person to acquire from such person a part or the entire interest in a loan which such person proposes to make, has heretofore made, or hereafter makes, together with a like interest in any security instrument covering real or personal property in the state proposed to be given or hereafter or heretofore given to such person to secure or evidence such loan; servicing directly or entering into servicing contracts with persons, and enforcing in this state the loans made by it or obligations heretofore or hereafter acquired by it in the transaction of business outside this state or in the transaction of any business authorized or permitted hereby; or acquiring, holding, leasing, mortgaging, contracting with respect to, or otherwise protecting, managing, or conveying property in this state which has heretofore or may hereafter be assigned, transferred, mortgaged, or conveyed to it as security for, or in whole or in part in satisfaction of, a loan or loans made by it or obligations acquired by it in the transaction of any business authorized or permitted hereby. However, no such foreign bank, foreign association, or foreign trust company shall be deemed to be transacting business in this state, shall be required to qualify so to do, or shall be deemed to be unlawfully exercising powers or duties, acting in an unlawful or prohibited capacity, or violating any of the provisions of this section or of any other law of this state solely by reason of the performance of any of the acts or business hereinbefore permitted or authorized hereby; further, nothing herein shall be construed as authorizing or permitting any foreign bank, association, or trust company to maintain an office within this state.

This section does not apply to banks or associations and trust companies incorporated under the laws of this state and having trust powers, banks or associations and trust companies resulting from an interstate merger transaction with a Florida bank pursuant to s. 658.2953 and having trust powers, or national banking associations or federal associations authorized and qualified to exercise trust powers in Florida.

Section 2. This act shall take effect September 1, 1999.

Approved by the Governor May 11, 1999.

Filed in Office Secretary of State May 11, 1999.