

CHAPTER 2014-97

Committee Substitute for Senate Bill No. 1238

An act relating to family trust companies; amending s. 655.005, F.S.; revising the definition of the term “financial institutions codes”; creating chapter 662, F.S.; creating s. 662.10, F.S.; providing a short title; creating s. 662.102, F.S.; providing the purpose of the act; creating s. 662.111, F.S.; defining terms; creating s. 662.112, F.S.; providing for the calculation of kinship; creating s. 662.114, F.S.; exempting a family trust company or foreign licensed family trust company from licensure; creating s. 662.115, F.S.; providing for the applicability of the chapter to a family trust company or foreign licensed family trust company; creating s. 662.120, F.S.; specifying the maximum number of designated relatives allowed for a family trust company and a licensed family trust company; creating s. 662.121, F.S.; providing procedures for applying for a family trust company license; requiring a fee; creating s. 662.1215, F.S.; providing for investigations of applicants by the Office of Financial Regulation; creating s. 662.122, F.S.; providing procedures for the registration of a family trust company or a foreign licensed family trust company; requiring a fee; creating s. 662.1225, F.S.; providing requirements for a family trust company, licensed family trust company, and foreign licensed family trust company; creating s. 662.123, F.S.; requiring organizational documents to include certain provisions; authorizing the use of the term “trust”; creating s. 662.124, F.S.; requiring a minimum capital account; creating s. 662.125, F.S.; vesting exclusive authority to manage a family trust company or licensed family trust company in a board of directors or managers; providing for appointment of directors and managers; requiring certain notice to the office in specified circumstances; requiring the office to issue a notice of disapproval of a proposed appointment in specified circumstances; creating s. 662.126, F.S.; requiring that licensed family trust companies procure and maintain fidelity bonds or specified minimum capital account and errors and omissions insurance; authorizing a family trust company that is not licensed to procure and maintain such coverage; authorizing licensed and unlicensed family trust companies to procure and maintain other insurance policies; creating s. 662.127, F.S.; requiring certain books and records to be segregated; creating s. 662.128, F.S.; requiring annual license and registration renewal; requiring a fee; creating s. 662.129, F.S.; providing for the discontinuance of a licensed family trust company; creating s. 662.130, F.S.; authorizing family trust companies to conduct certain activities; creating s. 662.131, F.S.; prohibiting certain activities on the part of family trust companies; creating s. 662.132, F.S.; imposing certain requirements on the assets that form the minimum capital of licensed family trust companies and family trust companies; authorizing such trust companies to purchase or rent real or personal property, invest funds, and, while acting as a fiduciary, make certain purchases; imposing a restriction on that authorization; clarifying the degree of prudence required of fiduciaries; restricting the authority of a

fiduciary to purchase certain bonds or securities; specifying additional authority of fiduciaries; applying the duty of loyalty to family trust companies in certain cases; creating s. 662.133, F.S.; requiring certain officers, directors, or managers of a licensed family trust company or a family trust company to make an oath, affirmation, affidavit, or acknowledgment on behalf of the company in certain circumstances; creating s. 662.134, F.S.; prohibiting a family trust company from advertising to the public; creating s. 662.135, F.S.; providing that a licensed family trust company is not required to post a bond to serve as a court-appointed fiduciary; creating s. 662.140, F.S.; authorizing the commission to adopt rules; creating s. 662.141, F.S.; authorizing the office to conduct examinations and investigations; requiring that family trust companies be examined at least once every 18 months; authorizing the office to accept an independent audit in lieu of conducting an examination; requiring the office to examine the books and records of a family trust company or licensed family trust company; authorizing the office to rely on a certificate of trust, trust summary, or written statement in certain circumstances; authorizing the commission to adopt rules relating to records and requirements; authorizing the office to examine the books and records of a foreign licensed family trust company; requiring family trust companies to pay examination fees tied to actual costs incurred by the office; providing a penalty for late payment and authorizing an administrative fine if late payment is intentional; creating s. 662.142, F.S.; providing for license revocation; specifying acts and conduct that constitute grounds for revocation; authorizing the office to suspend a license pending revocation; creating s. 662.143, F.S.; authorizing the office to issue a cease and desist order and an emergency cease and desist order; creating s. 662.144, F.S.; authorizing the office to collect fines for the failure to submit required reports; creating s. 662.145, F.S.; providing grounds for the removal of an officer, director, manager, employee, or agent of a licensed family trust company or a family trust company; creating s. 662.146, F.S.; providing for the confidentiality of certain company books and records; creating s. 662.147, F.S.; providing requirements for books and records of family trust companies; requiring the office to retain certain records for a specified time; allowing the introduction of certain copies into evidence; requiring the office to establish a schedule of fees for such copies; providing requirements for orders issued by courts or administrative law judges for the production of confidential records or information; creating s. 662.150, F.S.; providing for the domestication of a foreign family trust company; creating s. 662.151, F.S.; providing for the registration of a foreign licensed family trust company; amending s. 120.80, F.S.; adding licensed family trust companies to the entities regulated by the office that are exempted from licensing timeframes under ch. 120, F.S.; amending s. 736.0802, F.S.; providing circumstances under which certain trust transactions are not voidable by a beneficiary affected by a transaction; providing circumstances under which certain transactions involving the investment or management of trust property are not presumed to be affected by conflicts of interest; providing an exception; amending s. 744.351, F.S.; exempting a family trust company from certain bond

requirements and applying those requirements to licensed family trust companies and foreign licensed family trust companies; providing a contingent effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 655.005, Florida Statutes, is amended to read:

655.005 Definitions.—

(1) As used in the financial institutions codes, unless the context otherwise requires, the term:

(k) “Financial institutions codes” means:

- 1. Chapter 655, relating to financial institutions generally;
- 2. Chapter 657, relating to credit unions;
- 3. Chapter 658, relating to banks and trust companies;
- 4. Chapter 660, relating to trust business;
- 5. Chapter 662, relating to family trust companies;
- 6.5. Chapter 663, relating to international banking;
- 7.6. Chapter 665, relating to associations; and
- 8.7. Chapter 667, relating to savings banks.

Section 2. Chapter 662, Florida Statutes, consisting of ss. 662.10-662.151, Florida Statutes, to be entitled “Family Trust Companies,” is created.

Section 3. Section 662.10, Florida Statutes, is created to read:

662.10 Short title.—This chapter may be cited as the “Florida Family Trust Company Act.”

Section 4. Section 662.102, Florida Statutes, is created to read:

662.102 Purpose.—The purpose of the Family Trust Company Act is to establish requirements for licensing family trust companies, to provide regulation of those persons who provide fiduciary services to family members of no more than two families and their related interests as a family trust company, and to establish the degree of regulatory oversight required of the Office of Financial Regulation over such companies. Unlike trust companies formed under chapter 658, there is no public interest to be served outside of ensuring that fiduciary activities performed by a family trust company are restricted to family members and their related interests and as otherwise

provided for in this chapter. Therefore, family trust companies are not financial institutions within the meaning of the financial institutions codes, and licensure of these companies pursuant to chapters 658 and 660 should not be required as it would not promote the purposes of the codes as set forth in s. 655.001. Consequently, the Office of Financial Regulation is not responsible for regulating family trust companies to ensure their safety and soundness, and the responsibility of the office is limited to ensuring that fiduciary services provided by such companies are restricted to family members and related interests and not to the general public.

Section 5. Section 662.111, Florida Statutes, is created to read:

662.111 Definitions.—As used in this chapter, the term:

(1) “Applicant” means the corporation or limited liability company on whose behalf an application for a license to operate as a licensed family trust company is submitted under s. 662.121.

(2) “Authorized representative” means an officer or director of a family trust company, licensed family trust company, or foreign licensed family trust company, if organized as a corporation; or a manager, officer, or member of a family trust company, licensed family trust company, or foreign licensed family trust company, if organized as a limited liability company.

(3) “Capital account” means the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus and undivided profits or retained earnings of a family trust company organized as a corporation; or the initial cash investment remitted for membership interests in a family trust company organized as a limited liability company, plus any undivided profits or retained earnings of the limited liability company.

(4) “Capital stock” means the shares of stock issued to create nonwithdrawable capital for a corporation, or membership interests issued to create nonwithdrawable capital for a limited liability company.

(5) “Collateral kinship” means a relationship that is not lineal but derives from a common ancestor.

(6) “Commercial banking” means the business of receiving demand and time deposits, paying checks, or lending money to the public.

(7) “Commission” means the Financial Services Commission.

(8) “Controlling stockholder or member” means an individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the family trust company or licensed family trust company.

(9) “Designated relative” means a common ancestor of a family, who may be a living or deceased person, and who is so designated in the application for a license or annual license.

(10) “Family affiliate” means a company or other entity in which one or more family members own, control, or have the power to directly or indirectly vote more than 50 percent of a class of voting securities of that company or other entity.

(11) “Family member” means:

(a) A designated relative.

(b) A person within the fourth degree of lineal kinship to a designated relative of a family trust company, or a person within the sixth degree of lineal kinship to a designated relative of a licensed family trust company.

(c) A person within the seventh degree of collateral kinship to a designated relative of a family trust company, or a person within the ninth degree of collateral kinship to a designated relative of a licensed family trust company.

(d) The spouse or former spouse of an individual qualifying as a family member and an individual who is within the fifth degree of lineal kinship to that spouse or former spouse.

(e) A family affiliate.

(f) A trust established by a family member if the trust is funded exclusively by one or more family members. A trust to which property has been transferred as a result of a family member’s exercise of a power of appointment shall be deemed established by that family member if all qualified beneficiaries of the appointee trust are family members.

(g) A trust established by an individual who is not a family member if all of the noncharitable qualified beneficiaries of the trust are family members, except that a trust composed exclusively of nonindividual qualified beneficiaries is considered to be a family member if all of the nonindividual qualified beneficiaries are charitable foundations or other charitable entities as described in paragraph (j).

(h) The probate estate of a family member.

(i) The probate estate of an individual who is not a family member if all of the noncharitable beneficiaries of the estate are family members, except that an estate composed exclusively of nonindividual beneficiaries is considered to be a family member if all of the nonindividual beneficiaries are charitable foundations or other charitable entities as described in paragraph (j).

(j) A charitable foundation or other charitable entity in which a majority of the governing body is composed of family members.

(12) “Family trust company” means a corporation or limited liability company that:

- (a) Is exclusively owned by one or more family members.
- (b) Is organized or qualified to do business in this state.
- (c) Acts or proposes to act as a fiduciary to serve one or more family members.
- (d) Does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members.

(13) “Family trust company-affiliated party” means:

- (a) A director, officer, manager, employee, or controlling stockholder or member of a family trust company, licensed family trust company, or foreign licensed family trust company; or
- (b) A stockholder, a member, or any other person as determined by the office who participates in the affairs of a family trust company, licensed family trust company, or foreign licensed family trust company.

(14) “Financial institutions codes” has the same meaning as provided in s. 655.005(1).

(15) “Foreign licensed family trust company” means a family trust company that:

- (a) Is licensed by a state in the United States other than this state or the District of Columbia.
- (b) Has its principal place of business in a state in the United States other than this state or the District of Columbia.
- (c) Is operated in accordance with family or private trust company laws of the state in which it is licensed or of the District of Columbia.
- (d) Is subject to statutory or regulatory mandated supervision by the state in which the principal place of business is located or by the District of Columbia.

(e) Is not owned by, or a subsidiary of, a corporation, limited liability company, or other business entity that is organized in or licensed by any foreign country as defined in s. 663.01(3).

(16) “Licensed family trust company” means a family trust company that operates in accordance with this chapter and has been issued a license that has not been revoked or suspended by the office.

(17) “Lineal kinship” means a family member who is in the direct line of ascent or descent from a designated relative.

(18) “Office” means the Office of Financial Regulation.

(19) “Officer” of a family trust company means an individual, regardless of whether the individual has an official title or receives a salary or other compensation, who may participate in the major policymaking functions of a family trust company, other than as a director. The term does not include an individual who may have an official title and exercise discretion in the performance of duties and functions, but who does not participate in determining the major policies of the family trust company and whose decisions are limited by policy standards established by other officers, regardless of whether the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief officer, the chief financial officer, the senior trust officer, and all executive vice presidents of a family trust company, and all managers if organized as a limited liability company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or members or by the bylaws or operating agreement of the family trust company, other than in the capacity of a director, from participating in major policymaking functions of the family trust company, and such excluded officer does not actually participate therein.

(20) “Qualified beneficiary” has the same meaning as provided in s. 736.0103.

Section 6. Section 662.112, Florida Statutes, is created to read:

662.112 Degrees of kinship.—Degrees of kinship shall be calculated by adding the number of steps from a designated relative through each person to the family member, directly in the case of lineal kinship, or through the common ancestor in the case of collateral kinship.

Section 7. Section 662.114, Florida Statutes, is created to read:

662.114 Family trust company and foreign licensed family trust company licensing not required.—A family trust company or foreign licensed family trust company is not required to be a licensed family trust company.

Section 8. Section 662.115, Florida Statutes, is created to read:

662.115 Applicability of chapter to a family trust company or foreign licensed family trust company.—

(1) A family trust company that is not a licensed family trust company or a foreign licensed family trust company is subject to the provisions of this chapter unless the provisions are expressly limited in applicability to a licensed family trust company or foreign licensed family trust company.

(2) A licensed family trust company is subject to the provisions of this chapter that expressly refer to a licensed family trust company or that are not expressly limited to a family trust company that is not a licensed family trust company or to a foreign licensed family trust company.

(3) A foreign licensed family trust company is subject to the provisions of this chapter that expressly state that such provisions apply to a foreign licensed family trust company.

Section 9. Section 662.120, Florida Statutes, is created to read:

662.120 Maximum number of designated relatives.—

(1) A family trust company may not have more than one designated relative.

(2) A licensed family trust company may not have more than two designated relatives, and the designated relatives may not have a common ancestor within five generations.

Section 10. Section 662.121, Florida Statutes, is created to read:

662.121 Application for licensed family trust company; fees.—An applicant seeking to operate as a licensed family trust company must file an application with the office on forms prescribed by the office, accompanied by a nonrefundable \$10,000 application fee to be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter. The application must contain or be accompanied by:

(1) The name of the proposed licensed family trust company.

(2) A copy of the articles of incorporation or articles of organization and the bylaws or operating agreement of the proposed licensed family trust company.

(3) The physical address and mailing address of the proposed licensed family trust company, which must be located in this state.

(4) A statement describing in detail the services that will be provided to family members by the proposed licensed family trust company.

(5) The name and biographical information of each individual who will initially serve as a director, officer, manager, or member acting in a managerial capacity of the proposed licensed family trust company.

(6) The name and biographical information of each individual who owns or has the ability or power to directly or indirectly vote at least 10 percent or more of the outstanding shares, membership interest, or membership units of the proposed licensed family trust company.

(7) The names of the designated relatives.

(8) The amount of the initial capital account of the proposed licensed family trust company and the form in which the capital was paid and will be maintained.

(9) The type and amount of bonds or insurance that will be procured and maintained on directors, officers, managers, or members acting in a managerial capacity or employees pursuant to s. 662.126.

(10) A statement signed by the applicant, or by the individual signing on behalf of the proposed licensed family trust company, under penalty of perjury, affirming that the following statements are true:

(a) The proposed licensed family trust company is not currently transacting business with the general public.

(b) No director, officer, manager, or member served as a director, officer, or manager, or acted in a managerial capacity, for a trust company or any other financial institution that had a license issued under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country that was suspended or revoked within the 10 years preceding the date of the application.

(c) No director, officer, manager, or member acting in a managerial capacity has been convicted of, pled guilty or nolo contendere, regardless of whether adjudication of guilt is entered by the court, to a violation of the financial institutions codes, including s. 655.50, chapter 896, or similar state or federal law or related rule, or to a crime involving fraud, misrepresentation, or moral turpitude.

(d) No director, officer, manager, or member acting in a managerial capacity has had a professional license suspended or revoked within the 10 years preceding the date of the application.

(e) All information contained in the application is true and correct to the best knowledge of the individual signing the application on behalf of the proposed licensed family trust company.

(11) Any other additional information reasonably required by the office.

Section 11. Section 662.1215, Florida Statutes, is created to read:

662.1215 Investigation of license applicants.—

(1) For the purpose of this section, the application is not deemed to be filed until the applicant has provided the office with all information required to be included pursuant to s. 662.121.

(2) Upon filing an application for a license to operate as a licensed family trust company, the office shall conduct an investigation to confirm:

(a) That the persons who will serve as directors or officers of the corporation or, if the applicant is a limited liability company, managers or members acting in a managerial capacity, have not:

1. Been convicted of, or entered a plea of nolo contendere to, a crime involving fraud, misrepresentation, or moral turpitude;

2. Been convicted of, or pled nolo contendere to, a violation of the financial institutions codes, including s. 655.50, chapter 896, or similar state or federal law;

3. Been directors, officers, managers, or members of a financial institution licensed or chartered under the financial institutions codes or by the Federal Government or any other state, the District of Columbia, a territory of the United States, or a foreign country, whose license or charter was suspended or revoked within the 10 years preceding the date of the application;

4. Had a professional license suspended or revoked within the 10 years preceding the date of the application; or

5. Made a false statement of material fact on the application.

(b) That the name of the proposed company complies with s. 662.123.

(c) That capital accounts of the proposed company conform to s. 662.124 and that fidelity bonds and errors and omissions insurance coverage required under s. 662.126 are issued and effective.

(d) That the articles of incorporation or articles of organization conform to s. 662.123(1).

(3) If the investigation required under this section confirms that the applicant has met the requirements of ss. 662.1225, 662.123(1), 662.124, 662.125, and 662.126, and that the persons who will serve as directors or officers of the corporation or the managers or members acting in a managerial capacity of the limited liability company, as applicable, satisfy the criteria set forth in subsection (2), the office shall issue a license authorizing the applicant to operate as a licensed family trust company.

(4) If the office determines the criteria in subsection (2) have not been met, the office shall serve notice of its intent to deny the application and of the applicant's opportunity to request a hearing pursuant to ss. 120.569 and 120.57.

Section 12. Section 662.122, Florida Statutes, is created to read:

662.122 Registration of a family trust company or a foreign licensed family trust company.—

(1) A family trust company that is not applying under s. 662.121 to become a licensed family trust company must register with the office before beginning operations in this state. The registration application must:

(a) Provide the name of the designated relative.

(b) State that the family trust company is a family trust company as defined under this chapter and that its operations will comply with ss. 662.1225, 662.125, 662.131, and 662.134.

(c) Provide the current telephone number and street address of the physical location in this state of its principal place of operations where its books and records will be maintained.

(d) List the name and current street address in this state of its registered agent.

(2) A foreign licensed family trust company must register with the office before beginning operations in this state.

(a) The registration application must state that its operations will comply with ss. 662.1225, 662.125, 662.131, and 662.134 and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction.

(b) The registration application must provide:

1. The current telephone number and street address of the physical location of its principal place of business in its principal jurisdiction.

2. The current telephone number and street address of the physical location in this state of its principal place of operations where its books and records pertaining to its operations in this state will be maintained.

3. The current telephone number and street address of the physical location of any other offices located within this state.

4. The name and current street address in this state of its registered agent.

(c) The registration must include a certified copy of a certificate of good standing, or an equivalent document, authenticated by the official having custody of records in the jurisdiction where the foreign licensed family trust company is organized, along with satisfactory proof that the company is organized in a manner similar to a family trust company as defined under this chapter.

(3) The registration application required under this section for a family trust company and a foreign licensed family trust company must be accompanied by a nonrefundable registration fee of \$5,000.

(4) Registration applications required by this section shall be submitted on a form prescribed by the office and be signed, under penalty of perjury, by an officer or director if the family trust company is organized as a corporation, or by a manager, officer, or member if the family trust company is organized as a limited liability company.

(5) All fees received by the office pursuant to this section shall be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for purposes of administering this chapter.

Section 13. Section 662.1225, Florida Statutes, is created to read:

662.1225 Requirements for a family trust company, licensed family trust company, and foreign licensed family trust company.—

(1) A family trust company and a licensed family trust company shall maintain:

(a) A principal office physically located in this state where original or true copies of all records and accounts of the family trust company or licensed family trust company may be accessed and made readily available for examination by the office in accordance with this chapter. A family trust company or licensed family trust company may also maintain one or more branch offices within or outside of this state.

(b) A registered agent who has an office in this state at the street address of the registered agent.

(c) All applicable state and local business licenses, charters, and permits.

(d) A deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.

(2) In order to operate in this state, a foreign licensed family trust company must be in good standing in its principal jurisdiction and maintain:

(a) An office physically located in this state where original or true copies of all records and accounts of the foreign licensed family trust company pertaining to its operations in this state may be accessed and made readily available for examination by the office in accordance with this chapter.

(b) A registered agent who has an office in this state at the street address of the registered agent.

(c) All applicable state and local business licenses, charters, and permits.

(d) A deposit account with a state-chartered or national financial institution that has a principal or branch office in this state.

Section 14. Section 662.123, Florida Statutes, is created to read:

662.123 Organizational documents; use of term "family trust" in name.

(1) The articles of incorporation, certificate of incorporation, or articles of organization of a family trust company or licensed family trust company must contain:

(a) The name adopted by the company, which must distinguish the company from any other trust company formed in this state or engaged in the business of a trust company, family trust company, or licensed family trust company in this state. If the term “trust” is included in the name adopted by a family trust company, it must be immediately preceded by the term “family” so as to distinguish the entity from a trust company operating under chapter 658. This paragraph does not apply to a foreign licensed family trust company using a fictitious name that is registered and maintained pursuant to s. 865.09 and that distinguishes it.

(b) The purpose for which the company is formed, which must clearly identify the restricted activities permissible to a family trust company or licensed family trust company under this chapter.

(c) A statement that the company will not offer its services to the general public.

(d) A statement affirming that the articles of incorporation, certificate of incorporation, or articles of organization will not be amended without prior written notice to the office.

(2) A proposed amendment to the articles of incorporation, articles of organization, bylaws, or articles of organization of a limited liability company, family trust company, or licensed family trust company must be submitted to the office for review at least 30 days before it is filed or effective. An amendment is not considered filed or effective if the office issues a notice of disapproval with respect to the proposed amendment.

(3) The term “family trust” in the name adopted by a family trust company or licensed family trust company does not disqualify the name from being allowed under s. 605.0112 or s. 607.0401.

Section 15. Section 662.124, Florida Statutes, is created to read:

662.124 Minimum capital account required.—

(1) A licensed family trust company that has one designated relative may not be organized or operated with an owners’ capital account of less than \$250,000. The minimum capital account shall be increased to \$350,000 if two designated relatives of the licensed family trust company are named in the application for a license or in the annual license renewal. A family trust company may not be organized or operated with a capital account of less than \$250,000.

(2) The full amount of the initial capital account of a family trust company or licensed family trust company must be composed of one or more

of the asset groups described in s. 662.132(1)(a), exclusive of all organization expenses.

Section 16. Section 662.125, Florida Statutes, is created to read:

662.125 Directors or managers.—

(1) Exclusive authority to manage a family trust company or licensed family trust company is vested in a board of directors, if a corporation, or a board of directors or managers, if a limited liability company.

(2) A family trust company or licensed family trust company shall have at least three directors, if a corporation, or three directors or managers, if a limited liability company. At least one director or manager of the company must be a resident of this state.

(3) The licensed family trust company shall notify the office of the proposed appointment of an individual to the board of directors or addition as a member, or the appointment or employment of an individual as an officer or manager or member acting in a managerial capacity or equivalent position, at least 60 days before such appointment or employment becomes effective, if the company:

(a) Has been licensed for less than 2 years.

(b) Has undergone a change in control within the preceding 2 years.

(c) Is operating under a cease and desist order.

The notification must include the name and such biographical information as the office may reasonably require.

(4) A licensed family trust company may not appoint an individual to the board of directors, add a member, or appoint or employ an officer or manager or member acting in a managerial capacity or equivalent, if the office issues a notice of disapproval with respect to that person.

(5) The office shall issue a notice of disapproval if the office finds that the proposed appointment or employment of a person would otherwise cause the licensed family trust company to violate any of the requirements set forth in s. 662.121(10)(b)-(d) or s. 662.1215(2)(a).

Section 17. Section 662.126, Florida Statutes, is created to read:

662.126 Fidelity bonds; insurance.—

(1) The directors or managers of a licensed family trust company shall procure and maintain fidelity bonds on all active officers, directors, managers, members acting in a managerial capacity, and employees of the company, regardless of whether they receive a salary or other compensation from the company, in order to indemnify the company against loss because of

a dishonest, fraudulent, or criminal act or omission on their part, whether acting alone or in combination with other persons.

(2) Each fidelity bond shall be issued in an amount of at least \$1 million.

(3) In lieu of the fidelity bonds required under subsection (1), a licensed family trust company may increase its capital account required under s. 662.124 by \$1 million so that if it has one designated relative, it is organized or operated with a capital account of at least \$1.25 million, or if it has two designated relatives, it is organized or operated with a capital account of at least \$1.35 million.

(4) The licensed family trust company shall also procure and maintain an errors and omissions insurance policy of at least \$1 million in which it is listed as the insured to cover the acts and omissions of officers, directors, managers, and members acting in a managerial capacity, regardless of whether the person receives a salary or other compensation from the company.

(5) A family trust company or licensed family trust company may also procure and maintain other insurance policies necessary or desirable in connection with the business of the company, including, but not limited to, one or more casualty insurance policies.

(6) A family trust company that is not a licensed family trust company may procure and maintain fidelity bonds as described in this section.

(7) A family trust company that is not a licensed family trust company may procure and maintain errors and omissions insurance coverage as described in this section.

Section 18. Section 662.127, Florida Statutes, is created to read:

662.127 Segregation of books, records, and assets; fiduciary assets not liable.—

(1) Each family trust company and licensed family trust company shall maintain its fiduciary books and records separate and distinct from other records of the company and shall segregate all assets held in any fiduciary capacity from other assets of the company.

(2) Assets received or held in a fiduciary capacity by a family trust company or licensed family trust company are not subject to the debts or obligations of the company.

Section 19. Section 662.128, Florida Statutes, is created to read:

662.128 Annual renewal.—

(1) Within 30 days after the end of each calendar year, family trust companies, licensed family trust companies, and foreign licensed family trust companies shall file their annual renewal application with the office.

(2) The license renewal application filed by a licensed family trust company must include a verified statement that:

(a) The licensed family trust company operated in full compliance with this chapter, chapter 896, or similar state or federal law, or any related rule or regulation. The application must include proof acceptable to the office that the company is a family trust company as defined under this chapter.

(b) Describes any material changes to its operations, principal place of business, directors, officers, managers, members acting in a managerial capacity, and designated relatives since the end of the preceding calendar year.

(3) The registration renewal application filed by a family trust company must include a verified statement by an officer of the company that it is a family trust company as defined under this chapter and that its operations are in compliance with ss. 662.1225, 662.125, 662.131, and 662.134; chapter 896; or similar state or federal law, or any related rule or regulation, and include the name of its designated relative or relatives, if applicable, and the street address for its principal place of business.

(4) The registration renewal application filed by a foreign licensed family trust company must include a verified statement that its operations are in compliance with ss. 662.1225, 662.125, 662.131, and 662.134 and in compliance with the family trust company laws and regulations of its principal jurisdiction. It must also provide:

(a) The current telephone number and street address of the physical location of its principal place of business in its principal jurisdiction.

(b) The current telephone number and street address of the physical location in this state of its principal place of operations where its books and records pertaining to its operations in this state are maintained.

(c) The current telephone number and address of the physical location of any other offices located in this state.

(d) The name and current street address in this state of its registered agent.

(e) Documentation satisfactory to the office that the foreign licensed family trust company is in compliance with the family trust company laws and regulations of its principal jurisdiction.

(5) The annual renewal application shall be submitted on a form prescribed by the office and signed under penalty of perjury by an authorized representative.

(6) A fee of \$750 for a family trust company, \$1,500 for a licensed family trust company, and \$1,000 for a foreign licensed family trust company shall be submitted with the annual renewal application. All fees received by the office pursuant to this section shall be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

Section 20. Section 662.129, Florida Statutes, is created to read:

662.129 Discontinuing business.—If a licensed family trust company desires to discontinue business as a licensed family trust company, it must file with the office a certified copy of the resolution of the board of directors, or members if a limited liability company, authorizing that action. Upon discharge from all fiduciary duties which it has undertaken, the licensed family trust company shall provide certification of such discharge and voluntarily relinquish its license to operate as a licensed family trust company to the office, whereupon it shall be released from any fidelity bonds that it maintained pursuant to s. 662.126(1).

Section 21. Section 662.130, Florida Statutes, is created to read:

662.130 Powers of family trust companies, licensed family trust companies, and foreign licensed family trust companies.—

(1) A family trust company and a licensed family trust company may, for its eligible members and individuals:

(a) Act as a sole or copersonal representative, executor, or curator for probate estates being administered in a state or jurisdiction other than this state.

(b) Act as an attorney in fact or agent under a power of attorney, other than a power of attorney governed by chapter 709.

(c) Except as provided in s. 662.131, act within or outside this state as a sole fiduciary or cofiduciary, including acting as a trustee, advisory agent, assignee, assignee for the benefit of creditors, authenticating agent, bailee, bond or indenture trustee, conservator, conversion agent, custodian, escrow agent, fiscal or paying agent, financial advisor, guardian, investment advisor or manager, managing agent, purchase agent, receiver, registrar, safe-keeping or subscription agent, transfer agent, except for public companies, warrant agent, or similar capacities generally performed by corporate trustees, and in so acting possess, purchase, sell, invest, reinvest, safekeep, or otherwise manage or administer the real or personal property of eligible members and individuals.

(d) Exercise the powers of a corporation or limited liability company incorporated or organized under the laws of this state, or qualified to transact business as a foreign corporation or limited liability company under the laws of this state, which are reasonably necessary to enable it to fully exercise, in

accordance with commonly accepted customs and usages, a power conferred under this chapter.

(e) Delegate duties and powers, including investment functions under s. 518.112, in accordance with the powers granted to a trustee under chapter 736 or other applicable law, and retain agents, attorneys, accountants, investment advisers, or other individuals or entities to advise or assist the family trust company, licensed family trust company, or foreign licensed family trust company in the exercise of its powers and duties under this chapter and chapter 736. Such exercise of power may include, but is not limited to, retaining a bank trust department, or a public trust company, other than another family trust company, licensed family trust company, or foreign licensed family trust company.

(f) Perform all acts necessary for exercising the powers enumerated in this section or authorized by this chapter and other applicable laws of this state.

(2) Except as otherwise provided in s. 662.131, a foreign licensed family trust company that is in good standing in its principal jurisdiction may exercise all the trust powers in this state that a Florida family trust company may exercise.

Section 22. Section 662.131, Florida Statutes, is created to read:

662.131 Prohibitions.—Notwithstanding any provision of this chapter, a family trust company, licensed family trust company, or foreign licensed family trust company may not:

(1) Engage in commercial banking; however, it may establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services pursuant to this chapter.

(2) Engage in fiduciary services with the public unless licensed pursuant to chapter 658.

(3) Serve as a personal representative or a copersonal representative of a probate estate administered in this state.

(4) Serve as an attorney in fact or agent, including as a co-attorney in fact or co-agent, under a power of attorney pursuant to chapter 709.

Section 23. Section 662.132, Florida Statutes, is created to read:

662.132 Investments.—

(1) The assets forming the minimum capital account of a family trust company or licensed family trust company must:

(a) Consist of cash, United States Treasury obligations, or any combination thereof.

(b) Have an aggregate market value of at least 100 percent of the company's required capital account, as specified in s. 662.124. If the aggregate market value of 100 percent of the company's capital account is, at any time, less than the amount required under s. 662.124, the company has 5 business days to bring such capital account into compliance with s. 662.124.

(2) A family trust company or licensed family trust company may purchase or rent real or personal property for use in the conduct of the business and other activities of the company.

(3) Notwithstanding any other provision of law, a family trust company or licensed family trust company may invest funds for its own account, other than those required or allowed under subsection (1) or subsection (2), in any type or character of equity securities, debt securities, or other assets.

(4) Notwithstanding any other law, a family trust company or licensed family trust company may, while acting as a fiduciary, purchase directly from underwriters or distributors or in the secondary market:

(a) Bonds or other securities underwritten or distributed by:

1. The family trust company or licensed family trust company;

2. A family affiliate; or

3. A syndicate, including the family trust company, licensed family trust company, or family affiliate.

(b) Securities of an investment company, including a mutual fund, closed-end fund, or unit investment trust, as defined under the federal Investment Company Act of 1940, for which the family trust company or licensed family trust company acts as an advisor, custodian, distributor, manager, registrar, shareholder servicing agent, sponsor, or transfer agent.

(5) The authority granted in subsection (4) may be exercised only if:

(a) The investment is not expressly prohibited by the instrument, judgment, decree, or order establishing the fiduciary relationship.

(b) The family trust company or licensed family trust company procures in writing the consent of any cofiduciaries with discretionary investment powers to the investment.

(c) The family trust company or licensed family trust company discloses in writing to the person or persons to whom it sends account statements its intent to exercise the authority granted in subsection (4) before the first exercise of that authority, and each such disclosure reflects:

1. The nature of any interest the family trust company or licensed family trust company has, or is reasonably expected to have, in the underwriting or distribution of bonds or securities purchased.

2. The nature and amount of any fee or other compensation received, or reasonably expected to be received, by the family trust company or licensed family trust company in connection with the transaction.

3. The nature of the relationship between the family trust company or licensed family trust company and an investment company described in paragraph (4)(b).

4. The nature and amount of any fee or other compensation received, or reasonably expected to be received, by the family trust company or licensed family trust company for providing services to an investment company described in paragraph (4)(b).

(6) Subsections (4) and (5) do not affect the degree of prudence required of fiduciaries under the laws of this state. However, a purchase of bonds or securities pursuant to subsections (4) and (5) is not presumed to be affected by a conflict between the fiduciary's personal and fiduciary interests if such purchase:

(a) Is negotiated at a fair price.

(b) Is in accordance with:

1. The interest of the qualified beneficiaries.

2. The purposes of the trusts.

(c) Otherwise complies with:

1. The prudent investor rule in s. 518.11, or other prudent investor or similar rule under other applicable law, unless such compliance is waived in accordance with s. 518.11 or other applicable law.

2. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

(7) Notwithstanding subsections (1)-(6), a family trust company or licensed family trust company may not, while acting as a fiduciary, purchase a bond or security issued by the company or an affiliate thereof unless:

(a) The family trust company or licensed family trust company is expressly authorized to do so by:

1. The terms of the instrument creating the trust;

2. A court order;

3. The written consent of the settlor of the trust for which the family trust company or licensed family trust company is serving as trustee; or

4. The written consent of every adult qualified beneficiary of the trust who, at the time of such purchase, is entitled to receive income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; and

(b) The purchase of the security is at a fair price and complies with:

1. The prudent investor rule in s. 518.11, or other prudent investor or similar rule under other applicable law, unless such compliance is waived in accordance with s. 518.11 or other applicable law.

2. The terms of the instrument, judgment, decree, or order establishing the fiduciary relationship.

(8) Except as otherwise expressly limited by this section, a family trust company or licensed family trust company, while acting as a fiduciary, is also authorized, without limiting any powers otherwise conferred on fiduciaries by law, to do any of the following, which are not presumed to be affected by a conflict between the fiduciary's personal and fiduciary interests:

(a) Make an equity investment in a closely held entity that may or may not be marketable and that is directly or indirectly owned or controlled by one or more family members.

(b) Place a security transaction using a broker who is a family member.

(c) Enter into an agreement with a family member who is the settlor or a qualified beneficiary of a trust with respect to the appointment of the family trust company or licensed family trust company as a fiduciary of the trust, or with respect to the compensation of the family trust company and licensed family trust company for service as a fiduciary.

(d) Transact business with a family member.

(e) Transact business with or invest in any asset of another trust, estate, guardianship, or conservatorship for which the family trust company or licensed family trust company is a fiduciary or in which a family member has an interest.

(f) Deposit trust assets in a financial institution that is owned, controlled, or operated by one or more family members.

(g) Purchase, sell, hold, own, or invest in a security, bond, real or personal property, stock, or other asset of a family member.

(h) With or without adequate security, lend money to or borrow money from a family member or a trust, estate, or guardianship for which the family trust company or licensed family trust company serves as a fiduciary.

(9) If not inconsistent with and subject to the terms of subsections (4)-(8), the duty of loyalty under s. 736.0802 applies to family trust companies, licensed family trust companies, and foreign licensed family trust companies when serving as trustee of a trust whose administration is subject to chapter 736.

Section 24. Section 662.133, Florida Statutes, is created to read:

662.133 Oaths, affidavits, and acknowledgments.—If a family trust company or licensed family trust company is required to make an oath, affirmation, affidavit, or acknowledgment regarding a fiduciary capacity in which it is acting or is preparing to act, a director or officer or, if the company is a limited liability company, a manager or officer expressly authorized by the family trust company or licensed family trust company, shall make and, if required, subscribe to such oath, affirmation, affidavit, or acknowledgment on behalf of the company.

Section 25. Section 662.134, Florida Statutes, is created to read:

662.134 Unlawful to advertise services.—A family trust company, licensed family trust company, or foreign licensed family trust company may not advertise its services to the public.

Section 26. Section 662.135, Florida Statutes, is created to read:

662.135 Service as court-appointed fiduciary; bond requirement.—A licensed family trust company is not required to provide or otherwise post a bond or other surety to serve as a court-appointed fiduciary in a proceeding brought or conducted in this state.

Section 27. Section 662.140, Florida Statutes, is created to read:

662.140 Rules.—The commission may adopt rules necessary to carry out the purposes of this chapter.

Section 28. Section 662.141, Florida Statutes, is created to read:

662.141 Examination, investigations, and fees.—The office may conduct an examination or investigation of a family trust company, licensed family trust company, or foreign licensed family trust company at any time it deems necessary to determine whether a family trust company, licensed family trust company, foreign licensed family trust company, or family trust company-affiliated person has violated or is about to violate any provision of this chapter or rules adopted by the commission pursuant to this chapter, or any applicable provision of the financial institution codes or rules adopted by the commission pursuant to such codes.

(1) The office shall conduct an examination of a licensed family trust company, family trust company, and foreign licensed family trust company at least once every 18 months.

(2) In lieu of an examination by the office, the office may accept an audit of a family trust company, licensed family trust company, or foreign licensed family trust company by a certified public accountant licensed to practice in this state who is independent of the company, or other person or entity acceptable to the office. If the office accepts an audit pursuant to this subsection, the office shall conduct the next required examination.

(3) The office shall examine the books and records of a family trust company or licensed family trust company as necessary to determine whether it is a family trust company or licensed family trust company as defined in this chapter, and is operating in compliance with ss. 662.1225, 662.125, 662.126, 662.131, and 662.134, as applicable. The office may rely upon a certificate of trust, trust summary, or written statement from the trust company identifying the qualified beneficiaries of any trust or estate for which the family trust company serves as a fiduciary and the qualification of the qualified beneficiaries as permissible recipients of company services. The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a family trust company or licensed family trust company.

(4) The office shall examine the books and records of a foreign licensed family trust company as necessary to determine if it is a foreign licensed trust company as defined in this chapter and is in compliance with ss. 662.1225, 662.125, 662.130(2), 662.131, and 662.134. In connection with an examination of the books and records of the company, the office may rely upon the most recent examination report or review or certification letters or similar documentation issued by the regulatory agency to which the foreign licensed family trust company is subject to supervision. The commission may establish by rule the records to be maintained or requirements necessary to demonstrate conformity with this chapter as a foreign licensed family trust company. The office's examination of the books and records of a foreign licensed family trust company is, to the extent practicable, limited to books and records of the operations in this state.

(5) For each examination of the books and records of a family trust company, licensed family trust company, or foreign licensed family trust company as authorized under this chapter, the trust company shall pay a fee for the costs of the examination by the office. As used in this section, the term "costs" means the salary and travel expenses of field staff which are directly attributable to the examination of the trust company and the travel expenses of any supervisory or support staff required as a result of examination findings. The mailing of payment for costs incurred must be postmarked within 30 days after the receipt of a notice stating that such costs are due. The office may levy a late payment of up to \$100 per day or part thereof that a payment is overdue, unless waived for good cause. However, if the late payment of costs is intentional, the office may levy an administrative fine of up to \$1,000 per day for each day the payment is overdue.

(6) All fees collected under this section must be deposited into the Financial Institutions' Regulatory Trust Fund pursuant to s. 655.049 for the purpose of administering this chapter.

Section 29. Section 662.142, Florida Statutes, is created to read:

662.142 Revocation of license.—

(1) The following acts or conduct constitutes grounds for the revocation by the office of the license of a licensed family trust company:

(a) The company is not a family trust company as defined in this chapter;

(b) A violation of s. 662.1225, s. 662.123(1)(a), s. 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s. 662.131, s. 662.134, or s. 662.144;

(c) A violation of chapter 896, relating to financial transactions offenses, or any similar state or federal law or any related rule or regulation;

(d) A violation of any rule of the commission;

(e) A violation of any order of the office;

(f) A breach of any written agreement with the office;

(g) A prohibited act or practice under s. 662.131;

(h) A failure to provide information or documents to the office upon written request; or

(i) An act of commission or omission that is judicially determined to be a breach of trust or of fiduciary duty pursuant to a court of competent jurisdiction.

(2) Upon a finding that a licensed family trust company has committed any of the acts set forth in paragraphs (1)(a)-(h), the office may enter an order suspending the company's license and provide notice of its intention to revoke the license and of the opportunity for a hearing pursuant to ss. 120.569 and 120.57. If there has been a commission or omission under paragraph (1)(i), the office may immediately enter an order revoking the license. The licensed family trust company shall have 90 days to wind up its affairs after license revocation. If after 90 days the company is still in operation, the office may seek an order from the circuit court for the annulment or dissolution of the company.

Section 30. Section 662.143, Florida Statutes, is created to read:

662.143 Cease and desist authority.—

(1) The office may issue and serve upon a family trust company, licensed family trust company, or foreign licensed family trust company, or upon a family trust company-affiliated party, a complaint stating charges if the

office has reason to believe that such company, family trust company-affiliated party, or individual named therein is engaging in or has engaged in conduct that:

(a) Indicates that the company is not a family trust company or foreign licensed family trust company as defined in this chapter;

(b) Is a violation of s. 662.1225, s. 662.123(1)(a), s. 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

(c) Is a violation of any rule of the commission;

(d) Is a violation of any order of the office;

(e) Is a breach of any written agreement with the office;

(f) Is a prohibited act or practice pursuant to s. 662.131;

(g) Is a willful failure to provide information or documents to the office upon written request;

(h) Is an act of commission or omission or a practice that the office has reason to believe is a breach of trust or of fiduciary duty; or

(i) Is a violation of chapter 896 or similar state or federal law or any related rule or regulation.

(2) The complaint must contain the statement of facts and a notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. 120.569 and 120.57, or if a hearing is held and the office finds that any of the charges are true, the office may enter an order directing the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party, or the individual named therein to cease and desist from engaging in the conduct complained of and to take corrective action.

(4) If the family trust company, licensed family trust company, foreign licensed family trust company, or family trust company-affiliated party, or the individual named in such order, fails to respond to the complaint within the time allotted in ss. 120.569 and 120.57, such failure constitutes a default and justifies the entry of a cease and desist order.

(5) A contested or default cease and desist order is effective when reduced to writing and served upon the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party, or the individual named therein. An uncontested cease and desist order is effective as agreed.

(6) If the office finds that conduct described in subsection (1) is likely to cause substantial prejudice to members, shareholders, or beneficiaries of

fiduciary accounts of the family trust company, licensed family trust company, or foreign licensed family trust company, or to beneficiaries of services rendered by such company, it may issue an emergency cease and desist order requiring the family trust company, licensed family trust company, or foreign licensed family trust company, family trust company-affiliated party, or individual named therein to immediately cease and desist from engaging in the conduct complained of and to take corrective action. The emergency order is effective immediately upon service of a copy of the order upon the family trust company, licensed family trust company, or foreign licensed family trust company, or family trust company-affiliated party and remains effective for 90 days. If the office begins nonemergency cease and desist proceedings under subsection (1), the emergency order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

(7) A family trust company or foreign licensed family trust company shall have 90 days to wind up its affairs after entry of any order to cease and desist from operating as a family trust company or foreign licensed family trust company. If, after 90 days, a family trust company is still operating, the office may seek an order from the circuit court for the annulment or dissolution of the company. If, after 90 days, a foreign licensed family trust company is still operating, the office may seek an injunction from the circuit court restraining the company from continuing to operate in this state.

Section 31. Section 662.144, Florida Statutes, is created to read:

662.144 Failure to submit required report; fines.—If a family trust company, licensed family trust company, or foreign licensed family trust company fails to submit within the prescribed period its annual renewal or any other report required by this chapter or any rule, the office may impose a fine of up to \$100 for each day that the annual renewal or report is overdue. Failure to provide the annual renewal within 60 days after the end of the calendar year shall automatically result in termination of registration of a family trust company or revocation of the license of a licensed family trust company. The trust company shall thereafter have 90 days to wind up its affairs.

Section 32. Section 662.145, Florida Statutes, is created to read:

662.145 Grounds for removal.—

(1) The office may issue and serve upon a licensed family trust company or a family trust company and a family trust company-affiliated party a complaint stating charges if the office has reason to believe that the family trust company-affiliated party is engaging or has engaged in conduct that:

(a) Demonstrates that the company is not a family trust company as defined in this chapter;

(b) Is a prohibited act or practice under s. 662.131;

(c) Is a violation of s. 662.1225, s. 662.123(1)(a), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or s. 662.134;

(d) Is a violation of any other law involving fraud or moral turpitude which constitutes a felony;

(e) Is a violation of chapter 896, relating to offenses related to financial transactions, or similar state or federal law;

(f) Is a willful violation of a rule of the commission;

(g) Is a willful violation of an order of the office;

(h) Is a willful breach of a written agreement with the office; or

(i) Is an act of commission or omission or a practice that the office has reason to believe is a breach of trust or fiduciary duty.

(2) The complaint must contain a statement of facts and a notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57.

(3) If no hearing is requested within the time allowed by ss. 120.569 and 120.57, or if a hearing is held and the office finds that any of the charges in the complaint is true, the office may enter an order removing the family trust company-affiliated party or restricting or prohibiting participation by the family trust company-affiliated party in the affairs of the family trust company, licensed family trust company, or state financial institution, subsidiary, or service corporation.

(4) If the family trust company-affiliated party fails to respond to the complaint within the time allowed in ss. 120.569 and 120.57, such failure constitutes a default and justifies the entry of an order of removal.

(5) A contested or default order of removal is effective when reduced to writing and served on the family trust company or licensed family trust company and the family trust company-affiliated party. An uncontested order of removal is effective as agreed.

(6) The chief executive officer, or the person holding the equivalent office, of a family trust company or licensed family trust company shall promptly notify the office if he or she has actual knowledge that a family trust company-affiliated party is charged with a felony in a state or federal court.

(a) If a family trust company-affiliated party is charged with a felony in a state or federal court, or in the courts of a foreign country with which the United States maintains diplomatic relations which involves a violation of law relating to fraud, currency transaction reporting, money laundering, theft, or moral turpitude and the charge is equivalent to a felony charge under state or federal law, the office may enter an emergency order suspending the family trust company-affiliated party or restricting or prohibiting participation by such company-affiliated party in the affairs of

that particular family trust company or licensed family trust company or any financial institution, subsidiary, or service corporation, upon service of the order upon the company and the family trust company-affiliated party so charged.

(b) The order must contain notice of opportunity for a hearing pursuant to ss. 120.569 and 120.57, at which the family trust company-affiliated party may request a postsuspension hearing to show that continued service to or participation in the affairs of the family trust company or licensed family trust company does not pose a threat to the interests of the company. In accordance with applicable commission rules, the office shall notify the family trust company-affiliated party whether the order suspending or prohibiting the company-affiliated party from participating in the affairs of a licensed family trust company or family trust company, or state financial institution, subsidiary, or service corporation will be rescinded or otherwise modified. The emergency order remains in effect, unless otherwise modified by the office, until the criminal charge is disposed of. The acquittal of the family trust company-affiliated party charged, or the final, unappealed dismissal of all charges against such person, dissolves the emergency order, but does not prohibit the office from instituting proceedings under subsection (1). If the family trust company-affiliated party charged is convicted or pleads guilty or nolo contendere, regardless of adjudication, the emergency order becomes final.

(7) A family trust company-affiliated party removed from office pursuant to this section is not eligible for reelection to such position or to any official position in a family trust company, licensed family trust company, or financial institution in this state except with the written consent of the office. A family trust company-affiliated party who is removed, restricted, or prohibited from participation in the affairs of a family trust company, licensed family trust company, or state financial institution pursuant to this section may petition the office for modification or termination of such removal, restriction, or prohibition.

(8) The resignation, termination of employment or participation, or separation from a family trust company or a licensed family trust company of the family trust company-affiliated party does not affect the jurisdiction and authority of the office to issue a notice and proceed under this section against the company-affiliated party if such notice is served before the end of the 6-year period beginning on the date such person ceases to be a family trust company-affiliated party with respect to such company.

Section 33. Section 662.146, Florida Statutes, is created to read:

662.146 Confidentiality of books and records.—

(1) The books and records of a family trust company, licensed family trust company, and foreign licensed family trust company are confidential and shall be made available for inspection and examination only:

(a) To the office or its authorized representative;

(b) To any person authorized to act for the company;

(c) As compelled by a court, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure or pursuant to a subpoena issued in accordance with state or federal law. Before the production of the books and records of a family trust company, licensed family trust company, or foreign licensed family trust company, the party seeking production must reimburse the company for the reasonable costs and fees incurred in compliance with the production. If the parties disagree regarding the amount of reimbursement, the party seeking the records may request the court having jurisdiction to set the amount of reimbursement;

(d) Pursuant to a subpoena, to any federal or state law enforcement or prosecutorial instrumentality authorized to investigate suspected criminal activity;

(e) As authorized by the board of directors, if in corporate form, or the managers, if in limited liability company form; or

(f) As provided in subsection (2).

(2)(a) Each customer and stockholder, if a corporation, or member, if a limited liability company, has the right to inspect the books and records of a family trust company or licensed family trust company as they pertain to his or her accounts or the determination of his or her voting rights.

(b) The books and records pertaining to customers, members, and stockholders of a family trust company or licensed family trust company shall be kept confidential by the company and its directors, managers, officers, and employees. The books and records of customers, members, and stockholders may not be released except upon the express authorization of the customer as to his or her own accounts or a stockholder or member regarding his or her voting rights. However, information may be released, without the authorization of a customer, member, or shareholder in a manner prescribed by the board of directors, if a corporation, or managers, if a limited liability company, to verify or corroborate the existence or amount of a customer's account if that information is reasonably provided to meet the needs of commerce and to ensure accurate credit information. Notwithstanding this paragraph, this subsection does not prohibit a family trust company or licensed family trust company from disclosing financial information referenced in this subsection as permitted under 15 U.S.C. s. 6802, as amended.

(c) A person who willfully violates a provision of this section which relates to unlawful disclosure of confidential information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) This subsection does not apply to a foreign licensed family trust company. The laws of the jurisdiction of its principal place of business govern the rights of customers, members, and stockholders to inspect its books and records.

(3) For purposes of this section, the term “books and records” includes, but is not limited to, an application for a license and any documents connected with the application under s. 662.121; the office’s corresponding investigation under s. 662.1215 in granting or denying the issuance of the license; the initial registration documents of a family trust company or foreign licensed family trust company under s. 662.122; the annual renewal made by a family trust company, licensed family trust company, or foreign licensed family trust company under s. 662.128; and the documentation submitted to the office in connection with a licensed family trust company discontinuing its business under s. 662.129.

Section 34. Section 662.147, Florida Statutes, is created to read:

662.147 Records relating to the office examination; limited restrictions on public access.—

(1) A family trust company, licensed family trust company, and foreign licensed family trust company shall keep at the office it is required to maintain pursuant to s. 662.1225 full and complete records of the names and residences of all the shareholders or members of the trust company and the number of shares or membership units held by each, as applicable, as well as the ownership percentage of each shareholder or member, as the case may be. The records are subject to the inspection of all the shareholders or members of the trust company, and the officers authorized to assess taxes under state authority, during the normal business hours of the trust company. A current list of shareholders or members shall be made available to the office’s examiners for their inspection and, upon the request of the office, shall be submitted to the office.

(2) The office shall retain for at least 10 years:

(a) Examination reports.

(b) Investigatory records.

(c) The application for a license, any documents connected with the application, and the office’s corresponding investigation in granting or denying the issuance of the license.

(d) The initial registration documents of a family trust company or foreign licensed family trust company.

(e) The annual renewal made by a family trust company, licensed family trust company, or foreign licensed family trust company.

(f) The documentation submitted to the office in connection with a licensed family trust company discontinuing its business and any related information compiled by the office, or photographic copies thereof.

(3) A copy of any document on file with the office which is certified by the office as being a true copy may be introduced in evidence as if it were the original. The office shall establish a schedule of fees for preparing true copies of documents.

(4) Orders issued by courts or administrative law judges for the production of confidential records or information must provide for inspection in camera by the court or the administrative law judge. If the court or administrative law judge determines that the documents requested are relevant or would likely lead to the discovery of admissible evidence, the documents shall be subject to further orders by the court or the administrative law judge to protect the confidentiality thereof. An order directing the release of information shall be immediately reviewable, and a petition by the office for review of the order shall automatically stay any further proceedings in the trial court or the administrative hearing until the disposition of the petition by the reviewing court. If any other party files a petition for review, it will operate as a stay of the proceedings only upon order of the reviewing court.

Section 35. Section 662.150, Florida Statutes, is created to read:

662.150 Domestication of a foreign family trust company.—

(1) A foreign family trust company lawfully organized and currently in good standing with the state regulatory agency in the jurisdiction where it is organized may become domesticated in this state by:

(a) Filing with the Department of State a certificate of domestication and articles of incorporation in accordance with and subject to s. 607.1801 or by filing articles of conversion in accordance with s. 605.1045; and

(b) Filing an application for a license to begin operations as a licensed family trust company in accordance with s. 662.121, which must first be approved by the office or by filing the prescribed form with the office to register as a family trust company to begin operations in accordance with s. 662.122.

(2) A foreign family trust company may apply pursuant to paragraph (1)(b) before satisfying the requirements of paragraph (1)(a); however, upon receipt of a certificate of authority, the company must satisfy the requirements of paragraph (1)(a) before beginning operations.

Section 36. Section 662.151, Florida Statutes, is created to read:

662.151 Registration of a foreign licensed family trust company to operate in this state.—A foreign licensed family trust company lawfully organized and currently in good standing with the state regulatory agency in

the jurisdiction under the law of which it is organized may qualify to begin operations in this state by:

(1) Filing an application with the Department of State to apply for a certificate of authority in accordance with and subject to s. 605.0902 or s. 607.1503.

(2) Filing an initial registration to begin operations as a foreign licensed family trust company in accordance with and subject to s. 662.122 and subject to the sections of this chapter which specifically state that they apply to a foreign licensed family trust company.

(3) A company in operation as of the effective date of this act that meets the definition of a family trust company shall have 90 days from the effective date of this act to apply for licensure as a licensed family trust company, register as a family trust company or foreign licensed family trust company, or cease doing business in this state.

Section 37. Paragraph (a) of subsection (3) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(3) OFFICE OF FINANCIAL REGULATION.—

(a) Notwithstanding s. 120.60(1), in proceedings for the issuance, denial, renewal, or amendment of a license or approval of a merger pursuant to title XXXVIII:

1.a. The Office of Financial Regulation of the Financial Services Commission shall have published in the Florida Administrative Register notice of the application within 21 days after receipt.

b. Within 21 days after publication of notice, any person may request a hearing. Failure to request a hearing within 21 days after notice constitutes a waiver of any right to a hearing. The Office of Financial Regulation or an applicant may request a hearing at any time prior to the issuance of a final order. Hearings shall be conducted pursuant to ss. 120.569 and 120.57, except that the Financial Services Commission shall by rule provide for participation by the general public.

2. Should a hearing be requested as provided by sub-subparagraph 1.b., the applicant or licensee shall publish at its own cost a notice of the hearing in a newspaper of general circulation in the area affected by the application. The Financial Services Commission may by rule specify the format and size of the notice.

3. Notwithstanding s. 120.60(1), and except as provided in subparagraph 4., an every application for license for a new bank, new trust company, new credit union, or new savings and loan association, or new licensed family trust company must shall be approved or denied within 180 days after receipt

of the original application or receipt of the timely requested additional information or correction of errors or omissions. An ~~Any~~ application for such a license or for acquisition of such control which is not approved or denied within the 180-day period or within 30 days after conclusion of a public hearing on the application, whichever is later, shall be deemed approved subject to the satisfactory completion of conditions required by statute as a prerequisite to license and approval of insurance of accounts for a new bank, a new savings and loan association, ~~or a new credit union, or a new licensed family trust company~~ by the appropriate insurer.

4. In the case of an ~~every~~ application for license to establish a new bank, trust company, or capital stock savings association in which a foreign national proposes to own or control 10 percent or more of any class of voting securities, and in the case of an ~~every~~ application by a foreign national for approval to acquire control of a bank, trust company, or capital stock savings association, the Office of Financial Regulation shall request that a public hearing be conducted pursuant to ss. 120.569 and 120.57. Notice of such hearing shall be published by the applicant as provided in subparagraph 2. The failure of ~~any~~ such foreign national to appear personally at the hearing shall be grounds for denial of the application. Notwithstanding the ~~provisions of~~ s. 120.60(1) and subparagraph 3., every application involving a foreign national shall be approved or denied within 1 year after receipt of the original application or any timely requested additional information or the correction of any errors or omissions, or within 30 days after the conclusion of the public hearing on the application, whichever is later.

Section 38. Subsections (2) and (3) of section 736.0802, Florida Statutes, are amended, and paragraph (i) is added to subsection (5) of that section, to read:

736.0802 Duty of loyalty.—

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 736.1016, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (a) The transaction was authorized by the terms of the trust;
- (b) The transaction was approved by the court;
- (c) The beneficiary did not commence a judicial proceeding within the time allowed by s. 736.1008;
- (d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with s. 736.1012;

(e) The transaction involves a contract entered into or claim acquired by the trustee when that person had not become or contemplated becoming trustee;

(f) The transaction was consented to in writing by a settlor of the trust while the trust was revocable; or

(g) The transaction is one by a corporate trustee that involves a money market mutual fund, mutual fund, or a common trust fund described in s. 736.0816(3); or

(h) With regard to a trust that is administered by a family trust company, licensed family trust company, or foreign licensed family trust company operating under chapter 662, the transaction is authorized by s. 662.132(4)-(8).

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if the sale, encumbrance, or other transaction is entered into by the trustee with:

1.(a) The trustee's spouse;

2.(b) The trustee's descendants, siblings, parents, or their spouses;

3.(c) An officer, director, employee, agent, or attorney of the trustee; or

4.(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) This subsection does not apply to a trust being administered by a family trust company, licensed family trust company, or foreign licensed family trust company operating under chapter 662 if the sale, encumbrance, or other transaction is authorized by s. 662.132(4)-(8).

(5)

(i) This subsection does not apply to a trust administered by a family trust company, licensed family trust company, or foreign licensed family trust company operating under chapter 662.

Section 39. Subsection (5) of section 744.351, Florida Statutes, is amended to read:

744.351 Bond of guardian.—

(5) Financial institutions as defined in s. 744.309(4), other than a trust company operating under chapter 662 which is not a licensed family trust company or foreign licensed family trust company, and public guardians authorized by law to be guardians are shall not be required to file bonds.

Section 40. This act shall take effect October 1, 2015, if SB 1320 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

Approved by the Governor June 13, 2014.

Filed in Office Secretary of State June 13, 2014.