

CHAPTER 2016-35

Senate Bill No. 80

An act relating to family trust companies; amending s. 662.102, F.S.; revising the purposes of the Family Trust Company Act; providing legislative findings; amending s. 662.111, F.S.; redefining the term “officer”; creating s. 662.113, F.S.; specifying the applicability of other chapters of the financial institutions codes to family trust companies; providing that the section does not limit the authority of the Office of Financial Regulation to investigate any entity to ensure that it is not in violation of ch. 662, F.S., or applicable provisions of the financial institutions codes; amending s. 662.120, F.S.; revising the ancestry requirements for designated relatives of a licensed family trust company; amending s. 662.1215, F.S.; revising the requirements for investigations of license applicants by the Office of Financial Regulation; amending s. 662.122, F.S.; revising the requirements for registration of a family trust company and a foreign licensed family trust company; amending s. 662.1225, F.S.; requiring a foreign licensed family trust company to be in compliance with the family trust laws and regulations in its principal jurisdiction; specifying the date upon which family trust companies must be registered or licensed or, if not registered or licensed, cease doing business in this state; amending s. 662.123, F.S.; revising the types of amendments to organizational documents which must have prior approval by the office; amending s. 662.128, F.S.; extending the deadline for the filing of, and revising the requirements for, specified license and registration renewal applications; amending s. 662.132, F.S.; revising the authority of specified family trust companies while acting as fiduciaries to purchase certain bonds and securities; revising the prohibition against the purchase of certain bonds or securities by specified family trust companies; amending s. 662.141, F.S.; revising the purposes for which the office may examine or investigate a family trust company that is not licensed and a foreign licensed family trust company; providing that the office may rely upon specified documentation that identifies the qualifications of beneficiaries as permissible recipients of family trust company services; deleting the requirement that the office examine a family trust company that is not licensed and a foreign licensed family trust company; deleting a provision that authorizes the office to accept an audit by a certified public accountant in lieu of an examination by the office; authorizing the Financial Services Commission to adopt rules establishing specified requirements for family trust companies; amending s. 662.142, F.S.; revising the circumstances under which the office may enter an order revoking the license of a licensed family trust company; deleting a provision that authorizes the office to immediately revoke the license of a licensed family trust company under certain circumstances; amending s. 662.143, F.S.; revising the acts that may result in the entry of a cease and desist order against specified family trust companies and affiliated parties; amending s. 662.144, F.S.; authorizing a family trust

company to have its terminated registration or revoked license reinstated under certain circumstances; revising the timeframe for a family trust company to wind up its affairs under certain circumstances; requiring the deposit of certain fees and fines in the Financial Institutions' Regulatory Trust Fund; amending s. 662.145, F.S.; revising the office's authority to suspend a family trust company-affiliated party who is charged with a specified felony or to restrict or prohibit the participation of such party in certain financial institutions; amending s. 662.150, F.S.; making a technical change; amending s. 662.151, F.S.; conforming a provision to changes made by the act; providing an effective date.

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

Section 1. Section 662.102, Florida Statutes, is amended to read:

662.102 Purposes; findings Purpose.—The purposes purpose of the Family Trust Company Act are is to establish requirements for licensing family trust companies, to regulate 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. The Unlike trust companies formed under chapter 658, there is no public interest to be served by this chapter is to ensure 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, the Legislature finds that:

(1) A family trust company is companies are not a financial institution institutions within the meaning of the financial institutions codes, and Licensure of such a company these companies pursuant to chapters 658 and 660 is should not be required as it would not promote the purposes of the codes specified as set forth in s. 655.001.

(2) A family trust company may elect to be a licensed family trust company under this chapter if the company desires to be subject to the regulatory oversight of the office, as provided in this chapter, notwithstanding that the company restricts its services to family members.

(3) With respect to:

(a) A licensed ~~Consequently, the office of Financial Regulation is not responsible for regulating family trust company, the office is responsible for regulating, supervising, and examining the company as provided under this chapter.~~

(b) A family trust company that does not elect to be licensed and a foreign licensed family trust company, companies to ensure their safety and soundness, and the responsibility of the office's role office is limited to ensuring that fiduciary services provided by the company such companies are restricted to family members and authorized related interests and not to

the general public. The office is not responsible for examining a family trust company or a foreign licensed family trust company regarding the safety or soundness of its operations.

Section 2. Subsection (19) of section 662.111, Florida Statutes, is amended to read:

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

(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.

Section 3. Section 662.113, Florida Statutes, is created to read:

662.113 Applicability of other chapters of the financial institutions codes.—If a family trust company, licensed family trust company, or foreign licensed family trust company limits its activities to the activities authorized under this chapter, the provisions of other chapters of the financial institutions codes do not apply to the trust company unless otherwise expressly provided in this chapter. This section does not limit the office’s authority to investigate any entity to ensure that it is not in violation of this chapter or applicable provisions of the financial institutions codes.

Section 4. Subsection (2) of section 662.120, Florida Statutes, is amended to read:

662.120 Maximum number of designated relatives.—

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

Section 5. Paragraph (e) is added to subsection (2) of section 662.1215, Florida Statutes, to read:

662.1215 Investigation of license applicants.—

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

(e) That the management structure of the proposed company complies with s. 662.125.

Section 6. Paragraph (b) of subsection (1) and paragraphs (a) and (c) of subsection (2) of section 662.122, Florida Statutes, are amended 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:

(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, 662.123(1), 662.124, 662.125, 662.127, 662.131, and 662.134.

(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, 662.127, 662.131, and 662.134 and that it is currently in compliance with the family trust company laws and regulations of its principal jurisdiction.

(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, as determined by the office, that the company is organized in a manner similar to a family trust company as defined under this chapter and is in compliance with the family trust company laws and regulations of its principal jurisdiction.

Section 7. Subsection (2) of section 662.1225, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

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

(2) In order to operate in this state, a foreign licensed family trust company must be in good standing in its principal jurisdiction, must be in compliance with the family trust company laws and regulations of its principal jurisdiction, and must 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.

(3) A company in operation as of October 1, 2016, which meets the definition of a family trust company, must, on or before December 30, 2016, 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 8. Subsection (2) of section 662.123, Florida Statutes, is amended to read:

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

(2) A proposed amendment to the articles of incorporation, articles of organization, ~~certificate of formation, or certificate 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.

Section 9. Subsections (1) through (4) of section 662.128, Florida Statutes, are amended to read:

662.128 Annual renewal.—

(1) Within ~~45~~ 30 days after the end of each calendar year, ~~a~~ family trust ~~company companies~~, licensed family trust ~~company companies~~, ~~or and~~ foreign licensed family trust ~~company companies~~ shall file ~~its~~ ~~their~~ annual renewal application with the office.

(2) The license renewal application filed by a licensed family trust company must include a verified statement ~~by an authorized representative of the trust company~~ 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) A verified statement by an authorized representative officer of the trust company that it is a family trust company as defined under this chapter and that its operations are in compliance with ss. 662.1225, ~~662.123(1), 662.124,~~ 662.125, ~~662.127,~~ 662.131, and 662.134,[;] chapter 896,[;] or similar state or federal law, or ~~any~~ related rule or regulation.

(b) ~~, and include~~ The name of ~~the company's~~ 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 by an authorized representative of the trust company 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.

Section 10. Subsections (4) and (7) of section 662.132, Florida Statutes, are amended to read:

662.132 Investments.—

(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 broker-dealers ~~distributors~~ or in the secondary market:

(a) Bonds or other securities underwritten or brokered ~~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.

(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 its parent, or a subsidiary company an affiliate thereof or its parent, 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.

Section 11. Section 662.141, Florida Statutes, is amended 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 ~~the a family trust company, licensed family trust company, foreign licensed family trust company, or licensed family trust company-affiliated party thereof 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~~

~~institutions institution codes, or any rule rules adopted by the commission pursuant to this chapter or the such codes. The office may conduct an examination or investigation of a family trust company or foreign licensed family trust company at any time it deems necessary to determine whether the family trust company or foreign licensed family trust company has engaged in any act prohibited under s. 662.131 or s. 662.134 and, if a family trust company or a foreign licensed family trust company has engaged in such act, to determine whether any applicable provision of the financial institutions codes has been violated.~~

(1) ~~The office may rely upon a certificate of trust, trust summary, or written statement from the trust company which identifies the qualified beneficiaries of any trust or estate for which a family trust company, licensed family trust company, or foreign licensed family trust company serves as a fiduciary and the qualifications of such beneficiaries as permissible recipients of company services.~~

(2) ~~The office shall conduct an examination of a licensed family trust company, family trust company, or foreign licensed family trust company at least once every 36 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 this chapter 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.~~

(3)(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.

(4)(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 and ~~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 the 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.

(5)(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.

(6) 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, licensed family trust company, or foreign licensed family trust company.

Section 12. Section 662.142, Florida Statutes, is amended to read:

662.142 Revocation of license.—

(1) Any of the following acts constitute ~~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 a ~~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) ~~If the office finds~~ Upon a finding that a licensed family trust company has committed any of the acts ~~specified set forth in subsection (1) 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.

(3) ~~If a hearing is not timely requested pursuant to ss. 120.569 and 120.57 or if a hearing is held and it has been determined that the licensed family trust company has committed any of the acts specified in subsection (1) there has been a commission or omission under paragraph (1)(i), the office may immediately enter an order revoking the company's license. A~~ The licensed family trust company has 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 13. Subsection (1) of section 662.143, Florida Statutes, is amended 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 any of the following acts ~~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 that is judicially determined by or a court of competent jurisdiction 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.

Section 14. Section 662.144, Florida Statutes, is amended 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 the registration of a family trust company or foreign licensed family trust company or revocation of the license of a licensed family trust company. A family trust company may have its registration or license automatically reinstated by submitting to the office, on or before August 31 of the calendar year in which the renewal application is due, the company's annual renewal application and fee required under s. 662.128, a \$500 late fee, and the amount of any fine imposed by the office under this section. A family The trust company that fails to renew or reinstate its registration or license must shall thereafter have 90 days to wind up its affairs on or before November 30 of the calendar year in which such failure occurs. Fees and fines collected under 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 15. Paragraph (a) of subsection (6) of section 662.145, Florida Statutes, is amended to read:

662.145 Grounds for removal.—

(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 is charged with an offense in a court 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 state financial institution, subsidiary, or service

corporation, upon service of the order upon the company and the family trust company-affiliated party so charged.

Section 16. Paragraph (b) of subsection (1) of section 662.150, Florida Statutes, is amended 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:

(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.

Section 17. Subsection (3) of section 662.151, Florida Statutes, is amended 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:

~~(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 18. This act shall take effect upon becoming law.

Approved by the Governor March 10, 2016.

Filed in Office Secretary of State March 10, 2016.