

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 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 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.