

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0685-08
Bill No.: SS for SCS for HCS for HB 292
Subject: Banks and Financial Institutions; Corporations; Mortgages and Deeds; Insurance-General; Secretary of State
Type: Original
Date: May 9, 2017

Bill Summary: This proposal modifies provisions relating to the powers of certain financial institutions.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue Fund	(\$51,049)	(\$61,771)	(\$62,288)
Total Estimated Net Effect on General Revenue	(\$51,049)	(\$61,771)	(\$62,288)

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Technology Trust Fund	(\$40,000)	\$0	\$0
Family Trust Company Fund	\$0	\$20,000	\$20,000
Total Estimated Net Effect on Other State Funds	(\$40,000)	\$20,000	\$20,000

Numbers within parentheses: () indicate costs or losses.
This fiscal note contains 9 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue Fund	1 FTE	1 FTE	1 FTE
Total Estimated Net Effect on FTE	1 FTE	1 FTE	1 FTE

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Sections 362.1010 - 362.1115 Missouri Family Trust Company Act:

Officials from the **Office of the Secretary of State (SOS)** assume this part of the proposal will require an additional FTE for an investigator in Securities to fulfill the fiduciary duties. The position will be an Investigator III at an annual salary of \$40,188 in FY18. The Corporations Unit will need to train and learn the new processes as well as create new forms for the new filing type of Missouri Family Trust Company.

Officials from the SOS assume they would have to contract with the vendor to change the automated processes performed by their business software. The vendor would need to add a new process which includes a new filing type, a new notification that is sent to this type of business about their annual report requirements, new forms, and new fees. The SOS anticipates a one-time cost of \$60,000 to change the current software operated by the Business Services Division.

ASSUMPTIONS (continued)

It is unknown how many Missouri Family Trust Companies will be created. Each newly created Missouri Family Trust Company will pay a filing fee of \$5,000 to the Family Trust Company Fund. In addition, this legislation includes provisions such that if the trust company fails to file an annual report there is a fine of \$100.00 for each day the report is overdue and a \$500.00 late fee, also payable to the Family Trust Company Fund. Because this is a new filing type with a high cost of entry, we estimate 4 filings per year at \$5,000 each (\$20,000 total per year) for FY18, 19 and 20.

Because the cost of the software update will be incurred prior to the effective date of the bill, only the \$20,000 received into the Family Trust Company Fund from FY18 filings will be able to be applied to the \$60,000 cost. Thus the FY18 cost of the software update will be:

Technology Trust Fund: \$40,000
Family Trust Company Fund: \$20,000

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** assume the proposal will have no fiscal impact on their organization.

Officials from the **Office of the State Treasurer** did not respond to Oversight's request for fiscal impact for this proposal.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE FUND			
<u>Cost - SOS</u>			
Personal Services	(\$33,490)	(\$40,590)	(\$40,996)
Fringe Benefits	<u>(\$17,559)</u>	<u>(\$21,181)</u>	<u>(\$21,292)</u>
<u>Total Costs - SOS</u>	<u>(\$51,049)</u>	<u>(\$61,771)</u>	<u>(\$62,288)</u>
FTE Change - SOS	1 FTE	1 FTE	1 FTE
 ESTIMATED NET EFFECT TO THE GENERAL REVENUE	 <u>(\$51,049)</u>	 <u>(\$61,771)</u>	 <u>(\$62,288)</u>
Estimated Net FTE change for General Revenue Fund	1 FTE	1 FTE	1 FTE
TECHNOLOGY TRUST FUND			
<u>Cost - SOS - Vendor Cost to Change Software</u>	(\$40,000)	\$0	\$0
 ESTIMATED NET EFFECT TO THE TECHNOLOGY TRUST FUND	 <u>(\$40,000)</u>	 <u>\$0</u>	 <u>\$0</u>
FAMILY TRUST COMPANY FUND			
<u>Revenue - SOS - Missouri Trust Company Filing Fee</u>	\$20,000	\$20,000	\$20,000
<u>Cost - SOS - Vendor Cost to Change Software</u>	(\$20,000)	\$0	\$0
 ESTIMATED NET EFFECT TO THE FAMILY TRUST COMPANY FUND	 <u>\$0</u>	 <u>\$20,000</u>	 <u>\$20,000</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

No direct fiscal impact to small businesses would be expected as a result of this proposal.

FISCAL DESCRIPTION

This bill modifies the powers of banks and trust companies by allowing a bank or trust company to acquire or convey real property for the purpose of leasing the property to a public entity, including government buildings, municipal buildings, schools, and public hospitals. The bank or trust company must lease the property only to a public entity that has sufficient resources to satisfy all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the real property and any building or facility upon the expiration of the lease. The purchase of the real estate for this purpose cannot exceed the bank's or trust Company's lending limit under

Section 362.170, RSMo.

The bill authorizes a bank or trust company to contract with another bank or trust company, bank service corporation or other partnership, corporation, association or person, within or without the state, to render or receive any banking or trust services authorized under Chapter 362. Any person or entity that provides, by contract or otherwise, services to a bank or trust company will be subject to examination by the Division of Finance to the same extent as if the service was being performed by the bank or trust company on its own premises. The bill also requires each bank or trust company under the jurisdiction of the Division of Finance to provide a list of all persons or entities providing services to the bank or trust company.

The bill authorizes a bank or trust company to impose a convenience fee under certain circumstances for payments using an alternative payment channel that accepts a debit or credit card.

The bill repeals the requirements in Sections 362.280 and 362.285 for the examination of the bank or trust company books by the directors and the report of such examination.

FISCAL DESCRIPTION (continued)

This proposal establishes the Missouri Family Trust Company Act, which allows family trust companies to form and operate in this state. In its main provisions, the proposal:

- (1) Requires a family trust company to register with the Secretary of State, have a physical office and a registered agent in Missouri, and maintain a capital account of \$250,000 or more;
- (2) Allows a foreign family trust company to register with the Secretary of State and operate in Missouri provided that the foreign family trust company is organized similar to a Missouri family trust company and is in compliance with the family trust company laws and regulations in the jurisdiction in which the foreign family trust company was incorporated or organized;
- (3) Requires a corporation or a limited liability company to be governed by a board of three directors or managers and at least one of the directors or managers is a Missouri resident;
- (4) Specifies that the organizational instrument of the family trust company must include: a name for the trust company that distinguishes it, a purpose statement which clearly identifies the restricted activities permissible, and a statement affirming the family trust company will not engage in trust company business with the general public;
- (5) Allows a family trust company to procure fidelity bonds, errors and omissions insurance, and other insurance necessary or desirable in connection with the business of the family trust company;
- (6) Requires a family trust company to file an annual registration report, signed by an authorized representative, with the Secretary of State and to keep at its principal place of business complete records of the names and addresses of all shareholders or members, and the number of shares and percentage of ownership of each member or shareholder. The records must be kept confidential except for inspection and examination as compelled by the secretary, a court, or to comply with a subpoena, or for inspection by all shareholders or members of the trust company and its authorized officers. The willful disclosure of confidential information under this act will be a class E felony;
- (7) Allows a family trust company to act for a family member as a sole or co-personal representative, executor, or curator for a probate estate; act as an attorney-in-fact or agent under a power of attorney; act as a sole fiduciary or co-fiduciary including any similar capacity generally performed by a corporate trustee. A family trust company may possess, purchase, sell, invest, or otherwise manage or administer the real or personal property of family members and individuals.

FISCAL DESCRIPTION (continued)

A family trust company can exercise the powers of a corporation, limited liability company, or a foreign corporation or limited liability company to enable the trust company to perform all acts necessary to fully exercise the powers conferred by this act and Missouri law in accordance with commonly accepted customs and usages and delegate those duties and powers;

(8) Specifies that a foreign family trust company in good standing in the jurisdiction in which it is incorporated or organized may exercise all the trust powers in this state that a Missouri family trust company may exercise;

(9) Prohibits a family trust company from engaging in commercial banking, but allows a family trust company to establish accounts at financial institutions for its own purposes or on behalf of family members to whom it provides services under this act;

(10) Allows a family trust company to purchase or rent real or personal property for use in conducting business and other activities of the company and allows a family trust company to invest funds for its own account, other than those required to meet the minimum investment of the family trust, in any type or character of equity securities, debt securities, or other assets as long as certain requirements are met as delineated in this act;

(11) Prohibits a family trust company from advertising its services to the public;

(12) Authorizes the secretary to examine or investigate a family trust company at any time the secretary deems necessary to determine if the family trust company engaged in a prohibited act under Section 362.1065 or 362.1080, RSMo; and, if a family trust company engaged in such an act, to determine whether any other applicable law was violated;

(13) Authorizes the secretary to examine the books and records of a foreign family trust company as necessary to determine if such trust company is in compliance with this act;

(14) Authorizes the secretary to establish, by rule, the requirements and records necessary to demonstrate conformity with the act by a family trust company and requires the family trust company to pay the costs associated with an examination or investigation within thirty days of receiving the request for payment or be subject to a late payment fee of up to \$100 per day. The secretary may levy an administrative fee of up to \$1,000 per day for each day payment is overdue if the family trust company is intentionally not paying the bill;

FISCAL DESCRIPTION (continued)

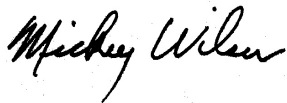
(15) Authorizes the secretary to issue and serve upon a family trust company or family trust company affiliated party a notice of charges and a notice of opportunity for a hearing if the secretary has reason to believe that such company, family trust company affiliated party, or individual named therein is engaging in or has engaged in any act that violates the rules and requirements of this act or any rule or order of the secretary, is a willful failure to provide information or documents to the secretary upon written request, is an act of commission or omission that is judicially determined by a court of competent jurisdiction to be a breach of trust or fiduciary duty, or is a violation of state or federal law related to anti-money laundering, customer identification, or any related rule or regulation; and

(16) Provides for a hearing process and, if the family trust company doesn't take corrective action, a cease and desist from operating as a family trust company order and an order from a circuit court for the annulment or dissolution of the company.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Office of the Secretary of State
Department of Insurance, Financial Institutions and Professional Registration



Mickey Wilson, CPA
Director
May 9, 2017

Ross Strobe
Assistant Director
May 9, 2017