

SECOND REGULAR SESSION

SENATE BILL NO. 623

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CUNNINGHAM.

Read 1st time January 9, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

4998S.011

AN ACT

To repeal sections 362.332 and 362.333, RSMo, and to enact in lieu thereof two new sections relating to the authority of banks and trust companies to transfer fiduciary obligations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 362.332 and 362.333, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 362.332 and 362.333, to read as follows:

362.332. 1. As used in this section, the following words and phrases shall mean:

(1) "Bank", any bank [subject to the provisions of chapter 362,] **organized under the laws of this state or any other state** which is duly authorized to exercise trust powers **under the laws of this state**, and any national bank which is authorized to exercise trust powers under the laws of the United States [and which has its principal place of business in Missouri], including a national bank whose operations include providing trust and other fiduciary services and related activities;

(2) "Beneficiary", any person or entity which benefits from, or has a present or future interest in, any money or property administered by a person with a fiduciary obligation;

(3) "Director", the director of the division of finance;

(4) "Fiduciary obligation", any obligation of any bank or trust company to a person or entity resulting from an appointment, designation or undertaking to act alone or jointly with others primarily for the benefit of others in matters connected with such appointment, designation or undertaking, and including, but

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 is not limited to, acting as a trustee of a trust, including a testamentary or
19 nontestamentary trust, or a trustee of a common trust fund; executor;
20 administrator; personal representative; guardian; conservator; custodian;
21 assignee; depository; receiver; attorney-in-fact; registrar or transfer agent with
22 respect to stocks, bonds or other evidences of indebtedness of any corporation,
23 association, state, municipality, or public authority; agent, including escrow agent
24 or agent for the investment of money; or in any other similar capacity. The term
25 "fiduciary obligation" includes any obligation occurring as a result of an
26 appointment or designation to any foregoing capacity upon the death of a person
27 serving in such capacity or upon the happening of any other future event;

28 (5) "Transferee", a bank or trust company assuming fiduciary obligations
29 pursuant to this section from a transferor;

30 (6) "Transferor", a bank or trust company transferring fiduciary
31 obligations pursuant to this section to a transferee;

32 (7) "Trust company", any trust company or bank organized under the laws
33 of this state **or any other state** which is duly authorized to exercise trust
34 powers **in this state, and any national bank organized under the laws of**
35 **the United States which is duly authorized to exercise trust powers.**

36 2. Notwithstanding any other provision of law to the contrary, a bank or
37 trust company may transfer by assignment to another bank or trust company any
38 or all of the fiduciary obligations of such bank or trust company, without any
39 order of or other action by any court or any consent or other approval of any
40 interested person, except as provided in subsection 5 of this section, upon the
41 prior approval of the director and provided that the transferor and transferee
42 comply with the provisions of this section. The assignment may encompass all
43 fiduciary obligations, a general class or classes of fiduciary obligations, or
44 specified individual accounts or other particularly identified fiduciary obligations.

45 3. The transferor, transferee or any beneficiary on behalf of all
46 beneficiaries jointly shall file an application for approval of the transfer of a
47 fiduciary obligation with the director, and shall provide all relevant information
48 as the director may deem necessary. The transferee shall also file proof with the
49 director that the transferee has given written notice by certified mail of the
50 proposed transfer, including a summary of the provisions of subsection 5 of this
51 section relating to objections to the transfer of the fiduciary obligation, at least
52 thirty days and not more than sixty days prior to the filing of the application, to
53 the transferor, all persons, firms, organizations or corporations who are known

54 to the applicant to be living or existing grantors under each affected trust or
55 other fiduciary obligation, or if there is no such known living or existing grantor,
56 to each living or existing beneficiary thereof known to the transferee. If any
57 living or existing grantor or any such beneficiary delivers to the applicant any
58 communication regarding the proposed transfer, the applicant shall furnish the
59 director with a copy of such communication together with any accompanying
60 documents. If the director determines that the transferee has the authority and
61 is qualified to complete the fiduciary obligation, and that the transfer of the
62 fiduciary obligation will not materially adversely affect the fiduciary obligation,
63 he shall issue an order approving the transfer of the fiduciary obligation. If the
64 director fails to approve or deny the transfer of the fiduciary obligation within
65 thirty days of the date of the filing of the application with the director, the
66 application shall be deemed approved by the director.

67 4. If the director approves the transfer of a fiduciary obligation, within
68 twenty days of the approval, the transferee shall publish a notice of the transfer
69 of the fiduciary obligation pursuant to this section in a newspaper of general
70 circulation in the county or city where the transferor's main banking house or
71 principal place of business, respectively, is located. The transfer of the fiduciary
72 obligation shall be effective upon the thirtieth day after the date of such
73 publication except with respect to any fiduciary obligation which upon that date
74 is the subject of notice of objection made pursuant to subsection 5 of this section.

75 5. Within thirty days after the publication of notice of approval by the
76 director of the transfer of a fiduciary obligation pursuant to subsection 4 of this
77 section, any grantor or beneficiary who was entitled to receive a written notice
78 pursuant to subsection 3 of this section may give written notice to the transferee
79 objecting to the transfer of the fiduciary obligation in which such person has an
80 interest. In order to complete the transfer, the transferee may petition the
81 probate division of the circuit court of the county or city not within a county in
82 which the notice was published to determine whether the transfer of the fiduciary
83 capacity will materially adversely affect the administration of the fiduciary
84 account. After notice to all interested parties and a hearing on the issues, the
85 circuit court may deny the relief sought by the petitioning transferee and not
86 transfer the fiduciary obligation to the petitioning transferee, may appoint a new
87 fiduciary to succeed the transferor if the court finds that the appointment of a
88 new fiduciary is in the best interests of the beneficiaries of the fiduciary
89 obligation but that the transfer of the fiduciary obligation to the petitioning

90 transferee will materially adversely affect the administration of the fiduciary
91 account, or shall order the transferor to transfer by assignment the fiduciary
92 obligation to the petitioning transferee.

93 6. On the effective date of the transfer of a fiduciary obligation pursuant
94 to this section, the transferor shall be released from all transferred fiduciary
95 obligations and all liability relating to such transferred fiduciary obligations, and
96 shall cease to act regarding all such transferred fiduciary obligations, except that
97 such transferor shall not be relieved of any liabilities arising out of a breach of
98 a fiduciary obligation occurring prior to such effective date. The transferor shall
99 file an itemized accounting of all assets and liabilities in each transferred
100 fiduciary account with the transferee upon the effective date of the
101 transfer. Notwithstanding the provision of any law or the provision of any
102 agreement to the contrary, the transferor shall not impose fees relating to the
103 transfer of the fiduciary obligation in excess of the actual cost to the transferor
104 of the transfer of the fiduciary obligation. The failure by a bank or trust company
105 to give any notice required by subsection 3 of this section with respect to any
106 fiduciary account shall not affect the validity of the transfer of a fiduciary
107 obligation pursuant to this section with respect to any other fiduciary obligation
108 or account.

109 7. Any appointment or other designation of a bank or trust company to a
110 fiduciary obligation in a trust, will or other instrument shall be deemed to be
111 made based only on facts and circumstances in existence on the date and at the
112 time that the appointment or designation is made, and the director or a court,
113 when considering the transfer of a fiduciary obligation, shall consider whether the
114 transferee has the authority to complete the fiduciary obligation and is qualified
115 to do so, the effect of the transfer of the fiduciary obligation including whether
116 the transfer of the fiduciary obligation will materially adversely affect the
117 fiduciary obligation, and whether the transfer of the fiduciary obligation is in the
118 best interests of the beneficiaries of the fiduciary obligation.

 362.333. In addition to the powers authorized in section 362.332, a bank
2 or trust company [with authorized trust authority and created under the laws of
3 this state], **as defined in section 362.332**, may transfer by assignment, for
4 consideration or no consideration, some or all of its fiduciary obligations that
5 consist only of irrevocable life insurance trusts to [the Missouri trust office of an
6 out-of-state bank with trust powers or an out-of-state] **any bank or** trust
7 company. The transfer of such irrevocable life insurance trusts shall be subject

8 to the provisions of this section and to all regulatory procedures described in
9 subsections 2 to 7 of section 362.332. On the effective date of the transfer of
10 fiduciary obligations under this section, the transferring bank or trust company
11 shall be released from all transferred fiduciary obligations and shall cease to act
12 as a fiduciary, except that such transferring bank or trust company shall not be
13 relieved of any obligations arising out of a breach of fiduciary duty occurring prior
14 to such effective date.

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