

By the Committee on Banking and Insurance; and Senator Grant

311-1722-99

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A bill to be entitled
An act relating to trust powers; amending s.
660.41, F.S.; excluding certain banks or
associations and trust companies from a
prohibition against exercising certain powers
and duties and acting within certain capacities
in this state; providing an effective date.

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

Section 1. Section 660.41, Florida Statutes, is
amended to read:

660.41 Corporations; certain fiduciary functions
~~prohibited.--All corporations, except banks or associations
and trust companies incorporated under the laws of this state
and having trust powers and except national banking
associations or federal associations located in this state and
having trust powers,~~are prohibited from exercising any of the
powers or duties and from acting in any of the capacities,
within this state, as follows:

(1) As personal representative of the estate of any
decedent, whether such decedent was a resident of this state
or not, and whether the administration of the estate of such
decedent is original or ancillary; however, if the personal
representative of the estate of a nonresident decedent is a
corporation duly authorized, qualified, and acting as such
personal representative in the jurisdiction of the domicile of
the decedent, it may as a foreign personal representative
perform such duties and exercise such powers and privileges as
are required, authorized, or permitted by s. 734.101.

1 (2) As receiver or trustee under appointment of any
2 court in this state.

3 (3) As assignee, receiver, or trustee of any insolvent
4 person or corporation or under any assignment for the benefit
5 of creditors.

6 (4) As fiscal agent, transfer agent, or registrar of
7 any municipal or private corporation, except that this
8 prohibition shall not be so construed as to prevent banks,
9 associations, and trust companies not located in this state
10 from acting within the state where located as fiscal agent,
11 transfer agent, or registrar of municipal or private
12 corporations of this state. Nothing herein shall prevent any
13 Florida corporation that is not a bank, association, or trust
14 company and that does not have trust powers from being its own
15 fiscal agent, transfer agent, or registrar concerning its own
16 affairs, stock, or securities. Nothing herein shall prevent
17 any Florida corporation or corporation having its principal
18 place of business in Florida registered as a transfer agent
19 with the Federal Deposit Insurance Corporation, the
20 Comptroller of the Currency, the Board of Governors of the
21 Federal Reserve System, or the Securities and Exchange
22 Commission from acting as a transfer agent for any other
23 private corporation. Nothing in this section or in any other
24 law of this state shall be construed to prohibit a foreign
25 bank, foreign association, or foreign trust company as trustee
26 of any charitable foundation or endowment, employees' pension,
27 retirement or profit-sharing trust, alone or together with a
28 cotrustee, from: making loans or committing to make loans to
29 any other person; contracting, in this state or elsewhere,
30 with any person to acquire from such person a part or the
31 entire interest in a loan which such person proposes to make,

1 has heretofore made, or hereafter makes, together with a like
2 interest in any security instrument covering real or personal
3 property in the state proposed to be given or hereafter or
4 heretofore given to such person to secure or evidence such
5 loan; servicing directly or entering into servicing contracts
6 with persons, and enforcing in this state the loans made by it
7 or obligations heretofore or hereafter acquired by it in the
8 transaction of business outside this state or in the
9 transaction of any business authorized or permitted hereby; or
10 acquiring, holding, leasing, mortgaging, contracting with
11 respect to, or otherwise protecting, managing, or conveying
12 property in this state which has heretofore or may hereafter
13 be assigned, transferred, mortgaged, or conveyed to it as
14 security for, or in whole or in part in satisfaction of, a
15 loan or loans made by it or obligations acquired by it in the
16 transaction of any business authorized or permitted hereby.
17 However, no such foreign bank, foreign association, or foreign
18 trust company shall be deemed to be transacting business in
19 this state, shall be required to qualify so to do, or shall be
20 deemed to be unlawfully exercising powers or duties, acting in
21 an unlawful or prohibited capacity, or violating any of the
22 provisions of this section or of any other law of this state
23 solely by reason of the performance of any of the acts or
24 business hereinbefore permitted or authorized hereby; further,
25 nothing herein shall be construed as authorizing or permitting
26 any foreign bank, association, or trust company to maintain an
27 office within this state.

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29 This section does not apply to banks or associations and trust
30 companies incorporated under the laws of this state and having
31 trust powers, banks or associations and trust companies

1 resulting from an interstate merger transaction with a Florida
2 bank pursuant to s. 658.2953 and having trust powers, or
3 national banking associations or federal associations
4 authorized and qualified to exercise trust powers in Florida.

5 Section 2. This act shall take effect September 1,
6 1999.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 Senate Bill 990

11 National banking associations or federal associations, based
12 in another state, but authorized and qualified to exercise
13 trust powers in Florida, are permitted to exercise such
14 fiduciary powers, without having to be located in Florida or
15 having a branch in Florida, as is currently provided under
16 federal law.
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