

By Senator Richter

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1 A bill to be entitled
2 An act relating to family trust companies; amending s.
3 662.102, F.S.; revising the purposes of the Family
4 Trust Company Act; providing legislative findings;
5 amending s. 662.111, F.S.; redefining the term
6 "officer"; creating s. 662.113, F.S.; specifying the
7 applicability of other chapters of the financial
8 institutions codes to family trust companies;
9 providing that the section does not limit the
10 authority of the Office of Financial Regulation to
11 investigate a family trust company to ensure
12 compliance with the chapter and applicable financial
13 institutions codes; amending s. 662.120, F.S.;
14 revising the ancestry requirements for designated
15 relatives of a licensed family trust company; amending
16 s. 662.1215, F.S.; revising the requirements for
17 investigations of license applicants by the Office of
18 Financial Regulation; amending s. 662.122, F.S.;
19 revising the requirements for registration of a family
20 trust company and a foreign licensed family trust
21 company; amending s. 662.1225, F.S.; requiring a
22 foreign licensed family trust company to be in
23 compliance with the family trust laws and regulations
24 in its jurisdiction; amending s. 662.123, F.S.;
25 revising the types of amendments to organizational
26 documents which must have prior approval by the
27 office; amending s. 662.128, F.S.; extending the
28 deadline for the filing of, and revising the
29 requirements for, specified license and registration

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30 renewal applications; amending s. 662.132, F.S.;
31 revising the prohibition against the purchase of
32 certain bonds or securities by specified family trust
33 companies; amending s. 662.141, F.S.; deleting the
34 requirement that the office examine a family trust
35 company that is not licensed and a foreign licensed
36 family trust company; providing that the office may
37 rely upon specified documentation that identifies the
38 qualifications of beneficiaries as permissible
39 recipients of family trust company services; deleting
40 a provision that authorizes the office to accept an
41 audit by a certified public accountant in lieu of an
42 examination by the office; authorizing the Financial
43 Services Commission to adopt rules establishing
44 specified requirements for family trust companies;
45 amending s. 662.142, F.S.; deleting a provision that
46 authorizes the office to immediately revoke the
47 license of a licensed family trust company under
48 certain circumstances; revising the circumstances
49 under which the office may enter an order revoking the
50 license of a licensed family trust company; amending
51 s. 662.143, F.S.; revising the acts that may result in
52 the entry of a cease and desist order against
53 specified family trust companies and affiliated
54 parties; amending s. 662.145, F.S.; revising the
55 office's authority to suspend a family trust company-
56 affiliated party who is charged with a specified
57 felony or to restrict or prohibit the participation of
58 such party in certain financial institutions; amending

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59 ss. 662.150 and 662.151, F.S.; making technical
60 changes; providing an effective date.
61

62 Be It Enacted by the Legislature of the State of Florida:
63

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

66 662.102 Purposes; findings Purpose.—The purposes ~~purpose~~ of
67 the Family Trust Company Act are ~~is~~ to establish requirements
68 for licensing family trust companies, to regulate ~~provide~~
69 ~~regulation of these~~ persons who provide fiduciary services to
70 family members of no more than two families and their related
71 interests as a family trust company, and to establish the degree
72 of regulatory oversight required of the Office of Financial
73 Regulation over such companies. The ~~Unlike trust companies~~
74 ~~formed under chapter 658, there is no public interest to be~~
75 ~~served by this chapter is to ensure~~ outside of ensuring that
76 fiduciary activities performed by a family trust company are
77 restricted to family members and their related interests and as
78 otherwise provided ~~for~~ in this chapter. Therefore, the
79 Legislature finds that:

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

86 (2) A family trust company may elect to be a licensed
87 family trust company under this chapter if the company desires

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88 to be subject to the regulatory oversight of the office, as
89 provided in this chapter, notwithstanding that the company
90 restricts its services to family members.

91 (3) With respect to: ~~Consequently, the office~~

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

96 (b) A family trust company that does not elect to be
97 licensed and a foreign licensed family trust company, ~~companies~~
98 ~~to ensure their safety and soundness, and the responsibility of~~
99 ~~the office's role~~ ~~office~~ is limited to ensuring that fiduciary
100 services provided by the company ~~such companies~~ are restricted
101 to family members and authorized related interests and not to
102 the general public. The office is not responsible for examining
103 a family trust company or a foreign licensed family trust
104 company regarding the safety or soundness of its operations.

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

107 662.111 Definitions.—As used in this chapter, the term:

108 (19) "Officer" of a family trust company means an
109 individual, regardless of whether the individual has an official
110 title or receives a salary or other compensation, who may
111 participate in the major policymaking functions of a family
112 trust company, other than as a director. The term does not
113 include an individual who may have an official title and
114 exercise discretion in the performance of duties and functions,
115 but who does not participate in determining the major policies
116 of the family trust company and whose decisions are limited by

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117 policy standards established by other officers, regardless of
118 whether the policy standards have been adopted by the board of
119 directors. The chair of the board of directors, the president,
120 the chief officer, the chief financial officer, the senior trust
121 officer, and all executive vice presidents of a family trust
122 company, and all managers if organized as a limited liability
123 company, are presumed to be ~~executive~~ officers unless such
124 officer is excluded, by resolution of the board of directors or
125 members or by the bylaws or operating agreement of the family
126 trust company, other than in the capacity of a director, from
127 participating in major policymaking functions of the family
128 trust company, and such excluded officer does not actually
129 participate therein.

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

132 662.113 Applicability of other chapters of the financial
133 institutions codes.—If a family trust company, licensed family
134 trust company, or foreign licensed family trust company limits
135 its activities to the activities authorized under this chapter,
136 the provisions of other chapters of the financial institutions
137 codes do not apply to the trust company unless otherwise
138 expressly provided in this chapter. This section does not limit
139 the office's authority to investigate any such trust company to
140 ensure that it is in compliance with this chapter and applicable
141 financial institutions codes.

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

144 662.120 Maximum number of designated relatives.—

145 (2) A licensed family trust company may ~~not~~ have up to more

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146 ~~than~~ two designated relatives, ~~and~~ The designated relatives may
147 not have a common ancestor within three ~~five~~ generations.

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

150 662.1215 Investigation of license applicants.—

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

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

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

159 662.122 Registration of a family trust company or a foreign
160 licensed family trust company.—

161 (1) A family trust company that is not applying under s.
162 662.121 to become a licensed family trust company must register
163 with the office before beginning operations in this state. The
164 registration application must:

165 (b) State that the family trust company is a family trust
166 company as defined under this chapter and that its operations
167 will comply with ss. 662.1225, 662.123(1), 662.124, 662.125,
168 662.127, 662.131, and 662.134.

169 (2) A foreign licensed family trust company must register
170 with the office before beginning operations in this state.

171 (a) The registration application must state that its
172 operations will comply with ss. 662.1225, 662.125, 662.127,
173 662.131, and 662.134 and that it is currently in compliance with
174 the family trust company laws and regulations of its principal

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175 jurisdiction.

176 (c) The registration must include a certified copy of a
177 certificate of good standing, or an equivalent document,
178 authenticated by the official having custody of records in the
179 jurisdiction where the foreign licensed family trust company is
180 organized, along with satisfactory proof, as determined by the
181 office, that the company is organized in a manner similar to a
182 family trust company as defined under this chapter and is in
183 compliance with the family trust company laws and regulations of
184 its principal jurisdiction.

185 Section 7. Subsection (2) of section 662.1225, Florida
186 Statutes, is amended to read:

187 662.1225 Requirements for a family trust company, licensed
188 family trust company, and foreign licensed family trust
189 company.—

190 (2) In order to operate in this state, a foreign licensed
191 family trust company must be in good standing in its principal
192 jurisdiction, must be in compliance with the family trust
193 company laws and regulations of its principal jurisdiction, and
194 must maintain:

195 (a) An office physically located in this state where
196 original or true copies of all records and accounts of the
197 foreign licensed family trust company pertaining to its
198 operations in this state may be accessed and made readily
199 available for examination by the office in accordance with this
200 chapter.

201 (b) A registered agent who has an office in this state at
202 the street address of the registered agent.

203 (c) All applicable state and local business licenses,

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204 charters, and permits.

205 (d) A deposit account with a state-chartered or national
206 financial institution that has a principal or branch office in
207 this state.

208 Section 8. Subsection (2) of section 662.123, Florida
209 Statutes, is amended to read:

210 662.123 Organizational documents; use of term "family
211 trust" in name.—

212 (2) A proposed amendment to the articles of incorporation,
213 articles of organization, certificate of formation, or
214 certificate of organization, ~~bylaws, or articles of organization~~
215 of a ~~limited liability company~~, family trust company, or
216 licensed family trust company must be submitted to the office
217 for review at least 30 days before it is filed or effective. An
218 amendment is not considered filed or effective if the office
219 issues a notice of disapproval with respect to the proposed
220 amendment.

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

223 662.128 Annual renewal.—

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

229 (2) The license renewal application filed by a licensed
230 family trust company must include a verified statement by an
231 authorized representative of the trust company that:

232 (a) The licensed family trust company operated in full

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233 compliance with this chapter, chapter 896, or similar state or
234 federal law, or any related rule or regulation. The application
235 must include proof acceptable to the office that the company is
236 a family trust company as defined under this chapter.

237 (b) Describes any material changes to its operations,
238 principal place of business, directors, officers, managers,
239 members acting in a managerial capacity, and designated
240 relatives since the end of the preceding calendar year.

241 (3) The registration renewal application filed by a family
242 trust company must include:

243 (a) A verified statement by an authorized representative
244 ~~officer~~ of the trust company that it is a family trust company
245 as defined under this chapter and that its operations are in
246 compliance with ss. 662.1225, 662.123(1), 662.124, 662.125,
247 662.127, 662.131, and 662.134, ~~+~~ chapter 896, ~~+~~ or similar state
248 or federal law, ~~+~~ or ~~any~~ related rule or regulation.

249 (b) ~~, and include~~ The name of the company's ~~its~~ designated
250 relative or relatives, if applicable, and the street address for
251 its principal place of business.

252 (4) The registration renewal application filed by a foreign
253 licensed family trust company must include a verified statement
254 by an authorized representative of the trust company that its
255 operations are in compliance with ss. 662.1225, 662.125,
256 662.131, and 662.134 and in compliance with the family trust
257 company laws and regulations of its principal jurisdiction. It
258 must also provide:

259 (a) The current telephone number and street address of the
260 physical location of its principal place of business in its
261 principal jurisdiction.

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262 (b) The current telephone number and street address of the
263 physical location in this state of its principal place of
264 operations where its books and records pertaining to its
265 operations in this state are maintained.

266 (c) The current telephone number and address of the
267 physical location of any other offices located in this state.

268 (d) The name and current street address in this state of
269 its registered agent.

270 (e) Documentation satisfactory to the office that the
271 foreign licensed family trust company is in compliance with the
272 family trust company laws and regulations of its principal
273 jurisdiction.

274 Section 10. Subsection (7) of section 662.132, Florida
275 Statutes, is amended to read:

276 662.132 Investments.—

277 (7) Notwithstanding subsections (1)-(6), a family trust
278 company or licensed family trust company may not, while acting
279 as a fiduciary, purchase a bond or security issued by the
280 company or its parent, or a subsidiary company ~~an affiliate~~
281 thereof or its parent, unless:

282 (a) The family trust company or licensed family trust
283 company is expressly authorized to do so by:

284 1. The terms of the instrument creating the trust;

285 2. A court order;

286 3. The written consent of the settlor of the trust for
287 which the family trust company or licensed family trust company
288 is serving as trustee; or

289 4. The written consent of every adult qualified beneficiary
290 of the trust who, at the time of such purchase, is entitled to

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291 receive income under the trust or who would be entitled to
292 receive a distribution of principal if the trust were
293 terminated; and

294 (b) The purchase of the security is at a fair price and
295 complies with:

296 1. The prudent investor rule in s. 518.11~~7~~ or other prudent
297 investor or similar rule under other applicable law, unless ~~such~~
298 compliance is waived in accordance with s. 518.11 or other
299 applicable law.

300 2. The terms of the instrument, judgment, decree, or order
301 establishing the fiduciary relationship.

302 Section 11. Section 662.141, Florida Statutes, is amended
303 to read:

304 662.141 Examination, investigations, and fees.—The office
305 may conduct an examination or investigation of a family trust
306 company, licensed family trust company, or foreign licensed
307 family trust company at any time it deems necessary to determine
308 whether the ~~a~~ family trust company, licensed family trust
309 company, or foreign licensed family trust company, or family
310 trust company-affiliated party thereof ~~person~~ has violated or is
311 about to violate any provision of this chapter, ~~or rules adopted~~
312 ~~by the commission pursuant to this chapter,~~ or any applicable
313 provision of the financial institution codes, or any rule ~~rules~~
314 adopted by the commission pursuant to this chapter or the ~~such~~
315 codes.

316 (1) The office may rely upon a certificate of trust, trust
317 summary, or written statement from the trust company which
318 identifies the qualified beneficiaries of any trust or estate
319 for which a family trust company, licensed family trust company,

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320 or foreign licensed family trust company serves as a fiduciary
321 and the qualifications of such beneficiaries as permissible
322 recipients of company services.

323 (2) The office shall conduct an examination of a licensed
324 family trust company, ~~family trust company, and foreign licensed~~
325 ~~family trust company~~ at least once every 36 ~~18~~ months.

326 ~~(2)~~ In lieu of an examination by the office, the office may
327 accept an audit of a family trust company, licensed family trust
328 company, or foreign licensed family trust company by a certified
329 public accountant licensed to practice in this state who is
330 independent of the company, or other person or entity acceptable
331 to the office. If the office accepts an audit pursuant to this
332 subsection, the office shall conduct the next required
333 examination.

334 ~~(3)~~ The office shall examine the books and records of a
335 ~~family trust company or~~ licensed family trust company as
336 necessary to determine whether it is a ~~family trust company or~~
337 licensed family trust company as defined in this chapter, and is
338 operating in compliance with this chapter ss. 662.1225, 662.125,
339 662.126, 662.131, and 662.134, as applicable. The office may
340 rely upon a certificate of trust, trust summary, or written
341 statement from the trust company identifying the qualified
342 beneficiaries of any trust or estate for which the family trust
343 company serves as a fiduciary and the qualification of the
344 qualified beneficiaries as permissible recipients of company
345 services. The commission may establish by rule the records to be
346 maintained or requirements necessary to demonstrate conformity
347 with this chapter as a family trust company or licensed family
348 trust company.

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349 (3)~~(4)~~ The office shall examine the books and records of a
350 foreign licensed family trust company as necessary to determine
351 if it is a foreign licensed trust company as defined in this
352 chapter and is in compliance with ss. 662.1225, 662.125,
353 662.130(2), 662.131, and 662.134. In connection with an
354 examination of the books and records of the company, the office
355 may rely upon the most recent examination report or review or
356 certification letters or similar documentation issued by the
357 regulatory agency to which the foreign licensed family trust
358 company is subject to supervision. ~~The commission may establish~~
359 ~~by rule the records to be maintained or requirements necessary~~
360 ~~to demonstrate conformity with this chapter as a foreign~~
361 ~~licensed family trust company.~~ The office's examination of the
362 books and records of a foreign licensed family trust company is,
363 to the extent practicable, limited to books and records of the
364 operations in this state.

365 (4)~~(5)~~ For each examination of the books and records of a
366 family trust company, licensed family trust company, or foreign
367 licensed family trust company as authorized under this chapter,
368 the trust company shall pay a fee for the costs of the
369 examination by the office. As used in this section, the term
370 "costs" means the salary and travel expenses of field staff
371 which are directly attributable to the examination of the trust
372 company and the travel expenses of any supervisory and ~~or~~
373 support staff required as a result of examination findings. The
374 mailing of payment for costs incurred must be postmarked within
375 30 days after the receipt of a notice stating that the such
376 costs are due. The office may levy a late payment of up to \$100
377 per day or part thereof that a payment is overdue, unless waived

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378 for good cause. However, if the late payment of costs is
 379 intentional, the office may levy an administrative fine of up to
 380 \$1,000 per day for each day the payment is overdue.

381 (5)~~(6)~~ All fees collected under this section must be
 382 deposited into the Financial Institutions' Regulatory Trust Fund
 383 pursuant to s. 655.049 for the purpose of administering this
 384 chapter.

385 (6) The commission may establish by rule the records to be
 386 maintained or requirements necessary to demonstrate conformity
 387 with this chapter as a family trust company, licensed family
 388 trust company, or foreign licensed family trust company.

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

391 662.142 Revocation of license.—

392 (1) Any of the following acts constitute ~~or conduct~~
 393 ~~constitutes~~ grounds for the revocation by the office of the
 394 license of a licensed family trust company:

395 (a) The company is not a family trust company as defined in
 396 this chapter.†

397 (b) A violation of s. 662.1225, s. 662.123(1)(a), s.
 398 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, s.
 399 662.131, s. 662.134, or s. 662.144.†

400 (c) A violation of chapter 896, relating to financial
 401 transactions offenses, or a ~~any~~ similar state or federal law or
 402 ~~any~~ related rule or regulation.†

403 (d) A violation of any rule of the commission.†

404 (e) A violation of any order of the office.†

405 (f) A breach of any written agreement with the office.†

406 (g) A prohibited act or practice under s. 662.131.†

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407 (h) A failure to provide information or documents to the
408 office upon written request. ~~or~~

409 (i) An act of commission or omission which that is
410 judicially determined by a court of competent jurisdiction to be
411 a breach of trust or ~~of~~ fiduciary duty ~~pursuant to a court of~~
412 ~~competent jurisdiction.~~

413 (2) If the office finds ~~Upon a finding~~ that a licensed
414 family trust company has committed any of the acts specified ~~set~~
415 ~~forth~~ in subsection (1) ~~paragraphs (1)(a)-(h)~~, the office may
416 enter an order suspending the company's license and provide
417 notice of its intention to revoke the license and of the
418 opportunity for a hearing pursuant to ss. 120.569 and 120.57.

419 (3) If a hearing is not timely requested pursuant to ss.
420 120.569 and 120.57 or if a hearing is held and it has been
421 determined that the licensed family trust company has committed
422 any of the acts specified in subsection (1) ~~there has been a~~
423 ~~commission or omission under paragraph (1)(i)~~, the office may
424 ~~immediately~~ enter an order revoking the company's license. ~~A~~ The
425 licensed family trust company has ~~shall have~~ 90 days to wind up
426 its affairs after license revocation. If after 90 days the
427 company is still in operation, the office may seek an order from
428 the circuit court for the annulment or dissolution of the
429 company.

430 Section 13. Subsection (1) of section 662.143, Florida
431 Statutes, is amended to read:

432 662.143 Cease and desist authority.—

433 (1) The office may issue and serve upon a family trust
434 company, licensed family trust company, ~~or~~ foreign licensed
435 family trust company, or ~~upon a~~ family trust company-affiliated

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436 party, a complaint stating charges if the office has reason to
 437 believe that such company, family trust company-affiliated
 438 party, or individual named therein is engaging in or has engaged
 439 in any of the following acts ~~conduct that:~~

440 (a) ~~Indicates that~~ The company is not a family trust
 441 company or foreign licensed family trust company as defined in
 442 this chapter.†

443 (b) ~~Is~~ A violation of s. 662.1225, s. 662.123(1)(a), s.
 444 662.125(2), s. 662.126, s. 662.127, s. 662.128, s. 662.130, or
 445 s. 662.134.†

446 (c) ~~Is~~ A violation of any rule of the commission.†

447 (d) ~~Is~~ A violation of any order of the office.†

448 (e) ~~Is~~ A breach of any written agreement with the office.†

449 (f) ~~Is~~ A prohibited act or practice pursuant to s.
 450 662.131.†

451 (g) ~~Is~~ A willful failure to provide information or
 452 documents to the office upon written request.†

453 (h) ~~Is~~ An act of commission or omission that is judicially
 454 determined by ~~or~~ a court of competent jurisdiction ~~practice that~~
 455 ~~the office has reason to be believe is~~ a breach of trust or ~~of~~
 456 fiduciary duty.† ~~or~~

457 (i) ~~Is~~ A violation of chapter 896 or similar state or
 458 federal law or any related rule or regulation.

459 Section 14. Paragraph (a) of subsection (6) of section
 460 662.145, Florida Statutes, is amended to read:

461 662.145 Grounds for removal.-

462 (6) The chief executive officer, or the person holding the
 463 equivalent office, of a family trust company or licensed family
 464 trust company shall promptly notify the office if he or she has

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465 actual knowledge that a family trust company-affiliated party is
466 charged with a felony in a state or federal court.

467 (a) If a family trust company-affiliated party is charged
468 with a felony in a state or federal court, or is charged with an
469 offense in a court ~~the courts~~ of a foreign country with which
470 the United States maintains diplomatic relations which involves
471 a violation of law relating to fraud, currency transaction
472 reporting, money laundering, theft, or moral turpitude and the
473 charge is equivalent to a felony charge under state or federal
474 law, the office may enter an emergency order suspending the
475 family trust company-affiliated party or restricting or
476 prohibiting participation by such ~~company-affiliated~~ party in
477 the affairs of that particular family trust company or licensed
478 family trust company or any state financial institution,
479 subsidiary, or service corporation, upon service of the order
480 upon the company and ~~the~~ family trust company-affiliated party
481 ~~so~~ charged.

482 Section 15. Paragraph (b) of subsection (1) of section
483 662.150, Florida Statutes, is amended to read:

484 662.150 Domestication of a foreign family trust company.—

485 (1) A foreign family trust company lawfully organized and
486 currently in good standing with the state regulatory agency in
487 the jurisdiction where it is organized may become domesticated
488 in this state by:

489 (b) Filing an application for a license to begin operations
490 as a licensed family trust company in accordance with s.
491 662.121, which must first be approved by the office, or by
492 filing the prescribed form with the office to register as a
493 family trust company to begin operations in accordance with s.

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494 662.122.

495 Section 16. Subsection (3) of section 662.151, Florida
496 Statutes, is amended to read:

497 662.151 Registration of a foreign licensed family trust
498 company to operate in this state.—A foreign licensed family
499 trust company lawfully organized and currently in good standing
500 with the state regulatory agency in the jurisdiction under the
501 law of which it is organized may qualify to begin operations in
502 this state by:

503 (3) A company in operation as of October 1, 2015, which the
504 ~~effective date of this act that~~ meets the definition of a family
505 trust company must, on or before December 30, 2015, shall have
506 ~~90 days from the effective date of this act to~~ apply for
507 licensure as a licensed family trust company, register as a
508 family trust company or foreign licensed family trust company,
509 or cease doing business in this state.

510 Section 17. This act shall take effect October 1, 2015.