LAWS OF DELAWARE
VOLUME 85
CHAPTER 346
153rd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 327

AN ACT TO AMEND TITLE 5 AND TITLE 12 OF THE DELAWARE CODE RELATING TO FAMILY TRUST COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline:

Subchapter IX. Family Trust Companies

§ 797. Short title.

This Act is entitled and may be cited as the "Family Trust Company Act."

§ 797A. Definitions.

As used in this subchapter:

(1) "Adviser" means a person considered to be an adviser under § 3313 of Title 12.

(2) "Affiliate" means a family affiliate of any family member and any person controlling, controlled by or under common control with the family trust company.

(3) "Charitable" means having as one or more of its purposes or activities, or both, that would qualify an organization or trust as exempt from federal income taxation under 26 U.S.C. §§ 501(c)(1) through (c)(7) of the Internal Revenue Code, whether or not the organization or trust actually avails itself of such exemption or obtains administrative confirmation thereof.

(4) "Collateral kinship" means a relationship that is not lineal but stems from a common ancestor. Degrees of collateral kinship are calculated by adding the number of steps from the designated relative (or other specified person) through the common ancestor to the family member.

(5) "Confidential information" means any of the following:

a. The names of stockholders, members, partners or other owners or managers, employees, trustees, other fiduciaries, advisers or officers.

b. Ownership information.

c. Capital contributions.

d. Addresses and other contact information.

e. Business affiliations.

f. Information obtained from the family trust company or any of its directors, officers, employees or stockholders.

g. Findings of the Commissioner through any examination or investigation of the family trust company.

h. Any information required to be reported to or filed with the Commissioner in respect of the family trust company or its directors, officers, employees or stockholders, or of any accounts administered by the family trust company.

i. Any information that qualifies as any person's "nonpublic personal information" under 15 U.S.C. § 6809 and the regulations adopted pursuant thereto.

j. Any information or agreement relating to any merger, consolidation, conversion, domestication, transfer, dividend, sale or transfer of assets or stock or other equity interests or any other similar reorganization or transaction.

k. Any information or agreement relating to any relationship with an individual trustee, other fiduciary or adviser for services from the family trust company or with an outside services provider to the family trust company.

l. Any other nonpublic information that, in the judgment of the Commissioner, is of a similar nature to any of the foregoing or could be used in connection with an act of bribery, extortion, identity theft or terrorism

involving a family member or any owner, management personnel or employee or other representative of a family trust company.

(6) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(7) a. "Designated relative" means either a living or deceased person or a living or deceased person and their living or deceased spouse, surviving spouse, or former spouse, in each case designated by one of the following:

1. The application for a certificate of authority to establish a family trust company.

2. The most recent filing with the Commissioner pursuant to § 797J of this title.

b. A living or deceased person and their living or deceased spouse, surviving spouse, or former spouse, if designated as a designated relative, shall count as 1 designated relative.

(8) "Family affiliate" means a corporation, partnership (whether general or limited), limited liability company, trust (including a common law trust, business trust, statutory trust, purpose trust, voting trust or any other form of trust), association, or any other organization or entity with respect to which 1 or more family members possess control.

(9) "Family member" includes any of the following:

a. Each designated relative, and their spouse, surviving spouse, or former spouse.

b. Any person within the tenth degree of lineal descent from a designated relative.

c. Any person within the tenth degree of collateral kinship to a designated relative.

d. Any individual who is a beneficiary (whether current, contingent, or residual), or a remainderman, legatee or devisee under a will or trust created or funded (directly or indirectly, in whole or in part) by a family member identified in paragraphs (8)a. through c. of this section, and the spouse, surviving spouse, former spouse, and other immediate family of that beneficiary, remainderman, legatee or devisee.

e. The spouse and any surviving or former spouse of any person identified in paragraphs (9)a. through d. of this section.

f. Any person who is within the fifth degree of lineal kinship of a spouse, surviving spouse, or former spouse identified in paragraph (9)e. of this section who is not a designated relative.

g. Any family affiliate and the current or former officers, managers, directors, trustees, other fiduciaries, advisers, shareholders, partners or members of that family affiliate and their immediate families.

h. A trust established or funded (directly or indirectly or in whole or in part) by one or more family members, either individually or jointly, with any individual trustee, fiduciary, adviser, protector or other individual assisting with the administration of that trust.

i. A trust established or funded (directly or indirectly, in whole or in part) by a person who is not a family member if any of the following apply:

1. The majority of current beneficiaries of that trust are family members.

2. The majority of the current, non-charitable beneficiaries of that trust are family members.

3. If all current beneficiaries are non-family member charities, a majority of the beneficiaries who succeed to the primary non-family member charitable beneficiaries are family members.

j. The estate of a family member and the estates of current or former officers, managers, directors, trustees, other fiduciaries, advisers, shareholders, partners, or members of a family affiliate and their immediate family.

k. The estate of a person who is not a family member if the majority of the beneficiaries of that estate, determined by number of beneficiaries or monetary value of their bequests, are family members.

l. An individual retirement account, qualified plan account or other deferred compensation or retirement account of a family member who is an individual and any beneficiary of such an account.

m. A trust of which a family member is a trustee, other fiduciary or adviser, an estate of which a family member is an executor, conservator or similar fiduciary, and a person for whom a family member is a legal guardian, custodian, conservator or similar fiduciary.

n. A charitable foundation, corporation, trust, or other entity that meets any of the following:

1. It is established by one or more family members and would qualify as any of the following:

A. A private foundation as defined in 26 U.S.C. § 501(c)(3) of the Internal Revenue Code and 26 C.F.R. § 1.509(a)-1 of the Treasury Regulations, including a private operating foundation as defined in 26 U.S.C. § 4942 and 26 C.F.R. § 53.4942(b)-1 of the Treasury Regulations.

B. A supporting organization as defined in 26 U.S.C. § 509(a)(3) of the Internal Revenue Code, regardless of whether the entity actually avails itself of the exemption or obtains administrative confirmation.

C. An organization described in 26 U.S.C. § 501(c)(4) of the Internal Revenue Code.

2. It is primarily funded, directly or indirectly, by one or more family members.

o. Any other individual whom the family trust company requests to be treated as a family member and whom the Commissioner determines has a close, family-like relationship with the family.

(10) "Family trust company" means a corporation or limited liability company that meets all of the following:

a. Acts or proposes to act as a fiduciary.

b. Is organized under the laws of this State as a family trust company pursuant to this subchapter.

c. Does not transact trust company business with, solicit trust company business from, or propose to or act as a fiduciary for, the general public or any person who is not a family member.

d. Has one designated relative.

(11) "Foreign family trust company" means a trust company that is organized as a corporation or a limited liability company under the laws of, and is supervised and regulated by the principal banking regulator of, another state, the District of Columbia, or a territory or possession of the United States, and that satisfies the definition of a family trust company under paragraph (10) of this section, excluding the requirement of paragraph (10)b. of this section.

(12) "Immediate family" with respect to an individual, means any of the following:

a. That individual's:

1. Spouse.

2. Parents and step-parents.

3. Any person within the second degree of lineal descent of that individual

b. The spouse of any individual listed under paragraphs (12)a.2. and a.3. of this section.

c. The parents and step-parents of any individual listed under paragraphs (12)a. or b. of this section.

d. Any person within the second degree of lineal descent of any of the individuals listed under paragraphs (12)a. through c. of this section.

(13) a. "Lineal kinship" means a family member who is in the direct line of ascent or descent from a designated relative. A descendant of a person includes any of the following:

1. Any natural child of that person.

2. Any individual legally adopted by that person.

3. Any stepchild or former stepchild of that person.

4. A foster child or former foster child of that person.

5. Any individual that was a minor when that person became the legal guardian of that individual.

6. Any child of that person's spouse. For purposes of this paragraph, any child includes, a natural child, adopted child, or stepchild.

b. Degrees of lineal kinship are calculated by adding the number of steps from the designated relative (or other specified person) directly through each person to the family member.

(14) "Loans" means as defined in § 773 of this title.

(15) "Principal place of business" means a physical office of a family trust company in this State, which office may be located within the premises of a bank, trust company, or other outside services provider that is providing services to the family trust company as permitted under paragraph (15)c.2. of this section, at which the family trust company does all of the following:

a. Maintains original or true copies of all material business records and accounts of the family trust company that are accessible to and available for examination by the Commissioner.

b. Conducts operations in this State through its directors, officers, or employees, or through a bank, trust company, or other outside services provider referred to in paragraph (15)c.2. of this section, as necessary to do all of the following:

1. Accept and administer trusts in this State.

2. Meet the applicable legal standards to permit the laws of this State to govern the administration of trusts for which the family trust company acts as fiduciary, to the extent that the laws of this State are intended to govern the administration of the trusts.

3. Hold confidential private meetings.

c. Maintains at least 1 trust officer who is an employee of the family trust company or is provided through an arrangement under paragraph (15)c.2. of this section. The trust officer must have training and experience in accepting and administering trusts that is satisfactory to the Commissioner. The family trust company must also meet either of the following:

1. Maintain additional employees the Commissioner deems necessary to perform the functions required by paragraph (15)b. of this section.

2. Obtain the use of additional qualified personnel and administrative services necessary to perform the functions required by paragraph (15)b. of this section through an arrangement with either of the following:

A. A bank or trust company that maintains its principal place of business in this State, is authorized under the laws of this State to exercise fiduciary powers in this State and is subject to the supervision of the Commissioner or the Office of the Comptroller of the Currency.

B. An outside services provider satisfactory to the Commissioner.

d. Meets other reasonable requirements the Commissioner imposes by regulation or order upon a finding that the requirement is necessary to protect beneficiaries of trusts administered by the family trust company.

(16) "Spouse" means a spouse or spousal equivalent.

(17) "Trust company powers" means the powers specified in § 773(4) of this title, including any regulations, guidance, and interpretations of the Commissioner regarding the powers of trust companies.

§ 797B. Establishment.

A corporation or a limited liability company established under this subchapter shall be known as a family trust company.

§ 797C. Powers; restrictions.

(a) With respect to a family trust company, the powers conferred by subchapter IV of this chapter or otherwise by law shall be limited solely to trust company powers and such powers as are necessary or incidental to the performance of trust company powers within the restrictions of the definition of a family trust company.

(b) Without the Commissioner's approval, a family trust company may not do any of the following:

(1) Amend its articles of association, charter, certificate of incorporation, certificate of formation, or bylaws by addition to its corporate purpose of powers.

(2) Merge or consolidate, except with the following:

a. Another family trust company established under this subchapter.

b. An entity that is a family member, so long as the family trust company is the surviving entity of such merger or consolidation.

c. An entity that will become as a result of the merger or consolidation, a family trust company.

(c) A family trust company may not do any of the following:

(1) Have more than a single office within this State, which shall be its principal place of business.

(2) Advertise its services to the general public.

(3) Exercise any power of appointment in a manner inconsistent with § 3548 of Title 12.

§ 797D. Organization; number of incorporators.

(a) Except as otherwise required by this subchapter, the organization of a family trust company is governed by subchapter II of this chapter. All of the following shall apply to the organization of a family trust company:

(1) The articles of association of a family trust company shall specifically state that the formation of the family trust company is the purpose for which the subscribers thereto associate themselves.

(2) Sections 724, 725, and 726 of subchapter II of this chapter, and any applicable regulations with respect thereto, shall be inapplicable to the organization of a family trust company. The incorporators of a family trust company shall apply to the Commissioner for a certificate of authority to establish the family trust company.

(3) Any application for a certificate of authority to establish a family trust company shall plainly state on its face that the application is for such a certificate with respect to a family trust company and not for a certificate of public convenience and advantage with respect to a bank, trust company or limited purpose trust company.

(4) Any certificate of authority to establish a family trust company issued by the Commissioner in respect of an application shall similarly state on its face that the certificate of authority approves the formation of a family trust company pursuant to this subchapter.

(b) The number of persons who associate themselves for the purpose of forming a family trust company shall be no less than 3, except to the extent otherwise provided in § 722 of this title for a family trust company that is formed as a limited liability company.

§ 797E. Application for a certificate of authority to establish a family trust company.

(a) The persons associating themselves for the purpose of forming a family trust company must file an application with the Commissioner on forms prescribed by the Commissioner. The application must contain or be accompanied by such information as the Commissioner requires, including the designated relative.

(b) The fees associated with the formation of a family trust company are set forth in § 735 of this title, other than the fee under § 735 of this title for the issuance of a certificate authorizing the corporation to begin the transaction of business. In addition, an initial annual license fee of not less than $5,000 nor more than $25,000, determined in accordance with § 797J of this subchapter, must be paid by the family trust company before the issuance of the certificate authorizing the family trust company to begin the transaction of business by the Commissioner.

(c) Within 60 days after an applicant files an application for a certificate of authority to establish a family trust company, the Commissioner shall notify the applicant of any additional information required for the Commissioner to determine the application is complete. When the Commissioner receives all requested information and determines the application is complete, the Commissioner shall notify the applicant that the application is accepted for filing. Within 60 days after acceptance, the Commissioner shall investigate the application to determine if it meets the requirements of this subchapter. Notwithstanding any other law of this State, there is no requirement to publish public notice of the filing of, and the Commissioner is not required to hold a public hearing on, an application for a certificate of authority to establish a family trust company, in order to make a decision on the application.

(d) The Commissioner shall consider an application for a certificate of authority to establish a family trust company withdrawn if the Commissioner does not receive all required information and fees within 6 months after the Commissioner's initial request, or within a later period set by the Commissioner. If an application is withdrawn, the Commissioner may not issue a certificate of authority to establish a family trust company unless the applicant submits a new application and pays all required fees.

(e) When determining whether to issue a certificate of authority to establish a family trust company, the Commissioner shall consider all of the following:

(1) Whether the family trust company's proposed capital and surplus satisfy the requirements of this subchapter and are adequate for its projected activities. In making this determination, the Commissioner shall consider the projected level of fiduciary assets under management and administration for each of the first 3 years of operation. The Commissioner may not require more than $375,000 in capital and surplus unless the Commissioner reasonably determines, considering all the factors under subsection (b) of § 797F of this title, that the family trust company's operation would otherwise be unsafe and unsound or is necessary for the protection of family members. The Commissioner may not require more than $1,000,000 in capital and surplus unless extraordinary circumstances exist. The Commissioner shall state the basis for any determination under this paragraph in written findings.

(2) The family trust company's future prospects.

(3) The family trust company's managerial resources, including the background of each proposed officer, director, and stockholder of the family trust company, and the experience of any outside service provider.

(4) The financial history of the family trust company's affiliates.

(5) The needs of the public and this State.

(f) If the Commissioner refuses to issue a certificate of authority to establish a family trust company in connection with an application, the Commissioner shall notify the applicant in writing. The notice must state the reasons for the refusal. Within 10 days after receiving the notice, the applicant may request a hearing before the Commissioner under Chapter 101 of Title 29. If the Commissioner issues a certificate of authority to establish a family trust company, the incorporators shall hold the first meeting of incorporators and follow the procedure under § 727 of this title.

§ 797F. Capital stock; capital assets.

(a) Section 745 of this title does not apply to a family trust company. The capital stock of a family trust company organized under this subchapter shall be $250,000. In addition to the capital stock required by the foregoing, a family trust company shall have a paid-in surplus account equal to no less than one-half of the minimum capital stock required by this section. The minimum capital stock and paid-in surplus required to be maintained by such family trust company in its trust company business under this section may not be utilized to satisfy the capital or reserve requirements to which the family trust company may be subject with respect to any activity authorized by § 761(a)(14) of this title.

(b) The Commissioner may require a family trust company to maintain capital and surplus in excess of the minimum required under subsection (a) of this section. The Commissioner may impose this requirement at the time of organization of the family trust company or any later time. Unless the Commissioner reasonably determines that the family trust company's operation would be unsafe and unsound or it is necessary for the protection of family members, the Commissioner may not require more than the minimum capital and surplus required by subsection (a) of this section. Unless the Commissioner reasonably determines that extraordinary circumstances exist, the Commissioner may not require more than $1,000,000 in total capital and surplus. The Commissioner shall base a family trust company's required amount of capital and surplus on an assessment of the risks associated with the family trust company's business plan, the application, any investigation, the conduct of its business, the nature of its fiduciary accounts, and any examination by or filing with the Commissioner. In making this determination, the Commissioner may consider any of the following:

(1) The nature and type of business proposed to be conducted or being conducted by the family trust company.

(2) The nature and liquidity of the family trust company's assets or proposed assets.

(3) The amount of fiduciary assets that are or are projected to be under management or under administration of the family trust company.

(4) The type of fiduciary assets held or proposed to be held by the family trust company and the proposed depositories or custodians, if any, of the fiduciary assets.

(5) The complexity of fiduciary responsibilities and degree of discretion undertaken or proposed to be undertaken by the family trust company.

(6) The competence and experience of current or proposed directors and officers of the family trust company and their understanding of, and capability and willingness to perform, their duties, including, without limitation, the duties of directors arising under § 742(a) of this title; and whether, if any limitations be found in the management team, the extent to which they have been compensated for by capable and experienced outside services providers.

(7) The extent and adequacy of proposed internal controls and written policies and procedures of the family trust company.

(8) Whether the family trust company has obtained or will obtain suitable audits by qualified outside auditors of its books and records and its fiduciary activities under applicable accounting rules and standards, or suitable internal audits, and the results of any such audits that have been completed within the prior 3 years.

(9) The existence and adequacy of insurance maintained or proposed to be maintained by the family trust company.

(10) The level of success of the family trust company in achieving the financial projections submitted to the Commissioner with its application for a certificate of authority to establish a family trust company.

(11) The level of fulfillment by the family trust company of its representations and its descriptions of its business structures and methods and management set forth in its application for a certificate of authority to establish a family trust company.

(c) If the Commissioner requires capital and surplus in excess of the minimum required under this subchapter, the Commissioner shall issue an order stating the reasons for the requirement and the timetable for contribution to the family trust company of the additional capital and surplus.

(d) Assets used to satisfy the minimum capital and surplus requirements under this section must consist of one or more of the following:

(1) Cash.

(2) United States government obligations that mature within 3 years after acquisition.

(3) Obligations fully backed by the full faith and credit of the United States that mature within 3 years after acquisition.

(4) Bank deposits insured by the Federal Deposit Insurance Corporation that mature within 3 years after acquisition.

(5) Readily marketable securities or other liquid and secure assets.

(e) A family trust company shall maintain the liquid portion of its stockholders' equity in accounts with 1 or more banks or other financial institutions in this State.

(f) Except as provided under subsections (d) and (e) of this section, a family trust company may invest its assets for its own account as permitted under this chapter.

§ 797G. Conversion of foreign family trust company or limited purpose trust company to family trust company.

(a) Upon written approval by the Commissioner, a foreign family trust company or a limited purpose trust company may convert to a family trust company, as described in this section, except that the action by a foreign family trust company shall be taken in the manner prescribed by and subject to the limitations and requirements imposed by the laws of the jurisdiction in which the foreign family trust company is organized, and such laws shall also govern the rights of its dissenting stockholders or members.

(b) A foreign family trust company or a limited purpose trust company that follows the conversion procedures set forth in Chapter 1 of Title 8 or Chapter 18 of Title 6, as applicable, as well as, with respect to the conversion of a foreign family trust company, the procedure prescribed by the laws of the jurisdiction in which the foreign family trust company is organized, to convert to a family trust company may be granted a certificate of authority to establish a family trust company with the approval of the Commissioner; provided, however, that the conversion shall be deemed approved if no action is taken by the Commissioner within 30 days after receipt of the completed application in accordance with subsection (c) of this section.

(c) The foreign family trust company or limited purpose trust company may apply for a certificate of authority to establish a family trust company and approval of the conversion by filing all of the following with the Commissioner:

(1) A certificate signed by its president and cashier or treasurer or equivalent officers and by a majority of its entire board of directors or equivalent governing body or governing persons, setting forth the corporate action taken in compliance with the laws of the jurisdiction in which the foreign family trust company or limited purpose trust company is organized.

(2) The plan of conversion and the proposed articles of association and bylaws (if applicable), approved by the stockholders or members of the foreign family trust company or limited purpose trust company, for the operation of the foreign family trust company or limited purpose trust company as a family trust company.

(3) Satisfactory evidence that at the effective time of the conversion, the family trust company will do all of the following:

a. Satisfy the definition of a family trust company established under this subchapter.

b. Comply with the requirements of §§ 797C, 797D, 797F and 797K of this title.

(d) Following the approval of the conversion by the Commissioner under this section, the legal effect of a conversion of a foreign family trust company into a family trust company, and the manner of making and effecting the same, shall be as prescribed in Chapter 1 of Title 8 for the conversion of domestic or foreign corporations or Chapter 18 of Title 6 for the conversion of domestic or foreign limited liability companies, as applicable.

(e) In the case of a conversion of a foreign family trust company or a limited purpose trust company to a family trust company, without any order or action on the part of any court or otherwise, all appointments, designations, and nominations, and all other rights and interests as trustee, executor, administrator, custodian, registrar of stocks and bonds, guardian of estates,

assignee, receiver, trustee of estates of persons mentally ill and in every other fiduciary capacity, automatically shall remain vested in the family trust company resulting from such conversion.

§ 797H. Conversion by a family trust company to a limited purpose trust company.

(a) Upon written approval by the Commissioner, a family trust company may convert to a limited purpose trust company, as described in this section.

(b) A family trust company which follows the conversion procedures under Chapter 1 of Title 8 or Chapter 18 of Title 6, as applicable, to convert to a limited purpose trust company may be granted a certificate of public convenience and advantage with respect to a limited purpose trust company with the approval of the Commissioner; provided, however, that the granting of the certificate of public convenience and advantage and the conversion shall be deemed approved if no action is taken by the Commissioner within 30 days after receipt of the completed application in accordance with subsection (c) of this section.

(c) The family trust company may apply for a certificate of public convenience and advantage with respect to a limited purpose trust company and approval of the conversion by filing the following with the Commissioner:

(1) A certificate signed by its president and cashier or treasurer or equivalent officers and by a majority of its entire board of directors, setting forth the corporate action taken in compliance with the laws of this State.

(2) The plan of conversion and the proposed articles of association and bylaws (if applicable), approved by the stockholders or members of the family trust company, for the operation of the family trust company as a limited purpose trust company.

(3) Satisfactory evidence that at the effective time of the conversion, the limited purpose trust company will comply with the requirements set forth in subchapter V of this chapter.

§ 797I. Foreign trust offices of family trust companies.

Any family trust company may open one or more trust offices or other places of business without the State, in the United States of America, or its possessions or in any other state of the United States of America or in foreign countries in conformance with and subject to the requirements of § 771 of this title; provided, however, that except as otherwise required by § 771(e) of this title, the paid-in capital and surplus of a family trust company need only meet the requirements of § 797F of this title.

§ 797J. Annual fee; change of designated relative fee.

(a) On or before January 30 of each year, other than the year in which the initial license fee was paid under § 797E of this title, each family trust company holding a certificate of authority to transact business issued pursuant to this chapter must pay to the Office of the State Bank Commissioner a license fee of not less than $5,000 nor more than $25,000. The Commissioner may adopt regulations establishing the amount of the license fee in excess of the minimum required by this subsection.

(b) A family trust company may designate a new designated relative or add the spouse, surviving spouse, or former spouse of the existing designated relative as a designated relative by making a filing with the Commissioner when the family trust company pays its annual license fee. A family trust company that designates a new designated relative or adds a spouse, surviving spouse, or former spouse of an existing designated relative as a designated relative when paying its annual license fee must pay an additional $1,000 fee for each person added.

(c) A family trust company may change a designated relative or add a spouse, surviving spouse, or former spouse of an existing designated relative as a designated relative at any other time by making a filing with the Commissioner and paying a nonrefundable $1,000 fee for each person designated.

(d) If the Commissioner disapproves any designation of a new designated relative or the spouse, surviving spouse, or former spouse of a designated relative as a designated relative, the Commissioner shall notify in writing the family trust company of the disapproval and the reasons for the disapproval. Within 10 days after receiving the notice of disapproval, the family trust company may request a hearing before the Commissioner under Chapter 101 of Title 29.

§ 797K. Insurance coverage.

A family trust company shall at all times maintain a director, officer and employee dishonesty bond in the amount of at least $1,000,000. In addition, a family trust company that is subject to the minimum capital and surplus requirements under § 797F of this title shall at all times maintain general liability and errors and omissions insurance coverage in an amount of at least $5,000,000 per occurrence. The insurance coverage required by this section may be in any form and may be paid for by the family trust company or its affiliates.

§ 797L. Confidentiality of family trust company records.

(a) Notwithstanding any contrary provision of this Code, and without limitation of the protections afforded by § 125 of this title or Chapters 100 and 101 of Title 29, except as otherwise provided in this section, any application or personal biographical or financial records submitted by a person pursuant to the provisions of this subchapter, any personal or financial records or other documents obtained by the Office of the State Bank Commissioner pursuant to an examination or audit conducted by the Office of the State Bank Commissioner pursuant to this chapter, and any other private information or confidential information relating to a family trust company or family members are confidential and may be disclosed by the Office of the State Bank Commissioner only to the following:

(1) Any authorized employee of the Office of the State Bank Commissioner.

(2) Any state or federal agency having jurisdiction over the family trust company.

(3) Any other person, if the Commissioner determines that the interest of the public in disclosure outweighs the privacy interest of the person to whom the information relates.

(b) Unless prohibited by law or court order, the Commissioner shall provide a family trust company or other person to whom the confidential information relates 10 days' written notice before disclosing confidential information under paragraph (a)(3) of this section.

(1) Any family trust company or other person that receives notice under this subsection may object to the disclosure of confidential information and is entitled to a hearing under Chapter 101 of Title 29.

(2) If a family trust company or other person requests a hearing, the Commissioner may not disclose the information before the conclusion of the hearing and the issuance of a ruling, unless otherwise required by law or court order.

(c) Prior to dissemination of any confidential information, the Commissioner shall require the receiving party to execute a written agreement to maintain the confidentiality of the information. The Commissioner may not disclose confidential information to the general public or to a competitor or potential competitor of a family trust company.

(d) This subchapter does not preclude a law-enforcement officer, a law-enforcement agency, or a court from gaining access to confidential records by subpoena, court order, search warrant, or other lawful means.

§ 797M. Violations.

If any family trust company is found by the Commissioner to have violated any condition or restriction of this subchapter or to have exercised powers beyond those conferred by this subchapter, or to have transacted trust company business with any person not a family member, the Commissioner shall issue an order pursuant to § 136 of this title to cease and desist such violation by a date certain. Upon a finding that the family trust company has not complied with such order, the Commissioner shall take such steps set forth in § 131 of this title as regards violations of this Code as the Commissioner deems appropriate.

§ 797N. Examinations and regulations.

(a) The Commissioner may examine a family trust company as provided in Chapter 1 of this title. For each examination of a family trust company authorized under this subchapter, the Commissioner shall charge and collect from the family trust company an examination fee as provided in Chapter 1 of this title.

(b) To the extent reasonable and justified under the circumstances, the Commissioner shall conduct examinations in a manner reasonably calculated to limit the burden on the family trust company and family members. The Commissioner may conduct an examination using any of the following or combination of the following:

(1) An on-site examination at any office of the family trust company.

(2) An off-site review of information provided by the family trust company at the Commissioner's request.

(c) The Commissioner may promulgate regulations to carry out the Commissioner's responsibilities under this subchapter.

(d) In establishing regulations and standards for the examination of family trust companies, the Commissioner shall do all of the following:

(1) Distinguish the regulatory requirements and examination standards of family trust companies from trust companies serving the general public based on the relative risks of each type of trust company.

(2) Tailor the regulatory requirements and examination standards applicable to a family trust company to achieve the purposes of this subchapter in light of the nature of the business of a family trust company.

§ 797O. Applicability of other laws.

Except as otherwise expressly provided for in this subchapter, and to the extent not inconsistent with the object, purpose and provisions of this subchapter, a family trust company shall be subject to and be entitled to the benefits of any section of this Code and any other statute or law of this State applicable to trust companies.

Section 2. Amend § 144, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 144. Restrictions on use of words "savings" or "trust" in corporate name.

No financial institution established under this title shall have or use the word "savings" in its title or name, except for a savings bank established under Chapter 16 of this title, nor shall any financial institution established, licensed or authorized to transact business under this title which is not a bank and trust company, a limited purpose trust company, a family trust company or a trust company have or use the word "trust" in its title or name, unless it, or an affiliate of such entity, is a regulated trust institution under the laws of this or any other state.

Section 3. Amend § 706(a), Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 706. Limited liability companies as trust companies, conversions.

(a) Notwithstanding any other provision of law to the contrary, a trust company, including a limited purpose trust ~~company,~~ company or a family trust company, may be a limited liability company and any trust company that is a limited liability company shall have all the powers and privileges of, and, except to the extent expressly otherwise provided in this Code, shall be subject to all the duties, restrictions and liabilities of, a corresponding trust company that is a corporation. Except to the extent expressly otherwise provided in this Code, a trust company that is a limited liability company shall be subject to all of the same laws and regulations of this State that relate to a trust company that is a corporation.

Section 4. Amend § 774, Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 774. Establishment.

A corporation established under this subchapter shall be known as a limited purpose trust company. The Commissioner shall issue no certificate of public convenience and advantage or certificate of authority to establish a family trust company with respect to any corporation proposed to be established under this chapter solely for the purpose of exercising trust company powers, excepting a corporation organized under this ~~subchapter.~~ subchapter or subchapter IX of this chapter.

Section 5. Amend § 918(a)(6), Title 5 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 918. Limitations on pledging or hypothecating assets.

(6) To qualify itself to exercise any of the powers of a trust company or to act in any fiduciary capacity; provided, however, that assets pledged in accordance with this subsection shall not be counted for purposes of satisfying the minimum capital stock and paid-in surplus required to be maintained by any bank, trust company or limited purpose trust company pursuant to § 745 of this ~~title.~~ title or by any family trust company pursuant to § 797F of this title.

Section 6. Amend § 3548, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3548. Limited purpose trust ~~companies;~~ companies and family trust companies; general powers of appointment.

(a) Any power conferred upon a limited purpose trust company or a family trust company formed under Chapter 7 of Title 5 in its capacity as a fiduciary which would, except for this section, constitute in whole or in part a general power of appointment if such power were held by any officer, director or shareholder of the limited purpose trust company or family trust company may only be exercised in the manner provided in subsection (b) of this section.

(b) A power described in subsection (a) of this section may, to the extent permissible under such power, be exercised as follows:

(1) The limited purpose trust company or family trust company may exercise the power in favor of a person other than any officer, director or shareholder of the limited purpose trust ~~company.~~ company or family trust company.

(2) The limited purpose trust company or family trust company may only exercise the power in favor of, or for the benefit of (including in discharge of a support obligation), an officer, director or shareholder of the limited purpose trust company or family trust company to provide for that person's health, education, support or maintenance as described under Internal Revenue Code §§ 2041 and 2514 [26 U.S.C. § 2041 or § 2514].

(c) Any power conferred upon a limited purpose trust company or family trust company in its capacity as a fiduciary to allocate receipts and expenses as between income and principal in favor of an officer, director or shareholder of the limited purpose trust company or family trust company must be exercised in accordance with Chapter 61 of this title.

Section 7. Amend § 3561, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3561. Reasonable compensation when trust instrument does not determine.

(a) As used in this section, the term "qualified trustee" means any person authorized by the law of this State or of the United States to act as a trustee whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation or the Comptroller of the Currency of the United States.

(b) Unless a trust instrument specifically provides that the trustee shall serve without compensation, when a trust instrument does not fix the compensation of the trustee, reasonable compensation shall be allowed. Subject to the provisions of § 3562 of this title, such compensation shall be determined as follows:

(1) For qualified trustees:

a. Each qualified trustee shall file with the Register in Chancery for every county in this State, a copy of a schedule or formula by which its allowance as compensation shall be ~~computed.~~ computed; provided, however, that no family trust company established under subchapter IX of Chapter 7 of Title 5 shall be required to file with the Register in Chancery such a schedule or formula. Such schedule or formula may be based upon or reflect the following factors:

1. The time spent or likely to be spent in administering a trust of the type contemplated;
2. The risks and responsibilities involved;
3. The novelty and difficulty of the tasks required of the trustee;
4. The skill and experience of the trustee;
5. Comparable charges for similar services;
6. The character of the trust assets;
7. The time constraints imposed upon the trustee in administering the trust;

b. Each qualified trustee (other than a family trust company that does not file with the Register in Chancery a fee schedule or formula) shall provide a copy of its current trustee fee schedule or formula as filed upon any filing pursuant to paragraph (b)(1)a. of this section to the settlor of any revocable trust and to each current income beneficiary of every other trust from which it will seek to be allowed compensation to be calculated in accordance with such schedule or formula;

c. Each qualified trustee (other than a family trust company that does not file with the Register in Chancery a fee schedule or formula) shall be allowed as reasonable compensation for services with respect to each trust from which it is entitled to compensation under this section, an amount determined by application of the schedule or formula so filed to trusts of that size and type.

(2) For other trustees, the Court of Chancery shall from time to time promulgate a rule fixing the method by which such other trustees other than qualified trustees may be allowed compensation for their services.

Section 9. This Act is effective immediately and is to be implemented the earlier of the following:

(1) One year from the date of the Act's enactment.

(2) Notice by the Office of the State Bank Commissioner published in the Register of Regulations that final regulations to implement this Act have been promulgated.

Approved July 13, 2026