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# ADAM JARCHOW

STATE REPRESENTATIVE • 28<sup>TH</sup> ASSEMBLY DISTRICT

**Testimony – Assembly Bill 715**  
**Assembly Committee on Financial Institutions**  
**January 31, 2018**

Current law creates uncertainty for certain types of trust activities. This bill clears up the uncertainty. Under current law, a trust company bank may only accept trust deposits. Such deposits are held in trust for a variety of purposes, such as settlement trusts, lawyer trust accounts, and other revocable and irrevocable trust purposes. Trust company banks that are organized in a different state (foreign trust companies) may operate in Wisconsin as a fiduciary if certain statutory requirements are met and the Department of Financial Institutions (DFI) issues a Certificate of Authority (Certificate).

However, a foreign trust company may only act as a fiduciary in Wisconsin in a diminished capacity. This is due to current law prohibiting a foreign trust company from operating branch offices or places of business within the state that “conduct business as a fiduciary.” These foreign trust companies may only maintain and operate what are called “representative offices.” Currently, it is unclear how representative offices or even foreign trust companies may act under Wisconsin law.

Another issue that arises from such ambiguity concerns Wisconsin trust company banks that operate in other states. Many states have reciprocity statutes which allow for foreign trust companies to operate, although usually only to the extent the trust company’s organizing state grants authority to foreign trust companies. This could result in limited fiduciary activities for Wisconsin trust companies operating in other states. This technical amendment could help alleviate the uncertainty of operating foreign trust companies in Wisconsin and Wisconsin companies operating outside of our borders.

This bill allows a foreign trust company which is issued a Certificate to act in a fiduciary capacity within Wisconsin. Such companies would be able to establish or maintain places of business, such as branch offices, for the purpose of conducting business as a fiduciary. This bill removes uncertainty, cleans current law, and allows our own trust companies to be confident that they will be treated fairly across state borders.

Thank you to the committee chair and members for hearing testimony on AB 715. I ask for your support to clarify our laws and minimize risks to Wisconsin companies operating in other states.



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# DAVID CRAIG

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STATE SENATOR

Assembly Committee on Financial Institutions  
Public Hearing, January 31, 2018  
Assembly Bill 715  
Senator David Craig, 28<sup>th</sup> Senate District

Chairman Katsma and Committee Members,

Thank you for taking testimony on Assembly Bill 715 relating to foreign corporations conducting business as a fiduciary in this state.

A foreign trust corporation is organized to act as a fiduciary under the guidance of a trustee, guardian, or personal representative. There are various reasons why an individual may set up a trust, from safeguarding assets to passing on a family business. Currently in Wisconsin, foreign trust corporations can accept trust deposits, but it is unclear whether they can operate as a fiduciary in the state.

Assembly Bill 715 seeks to allow what many of our Midwestern states already provide; a home for foreign trust corporations to operate. With this update to current law, Wisconsin would allow a foreign trust company that has been issued a certificate by the Department of Financial Institutions Division of Banking to conduct business as a fiduciary through a branch office or place of business in Wisconsin.

This bill further seeks to remove ambiguity in our state statutes that has the potential to create a problem for Wisconsin trust company banks operating in other states. A number of states have reciprocity statutes that allow a foreign trust corporation to operate in another state. Under these reciprocity statutes, authority is granted to the foreign trust corporation to the same extent that the state in which the foreign trust corporation is organized grants authority to out-of-state trust corporations to service similar corporations with the same fiduciary capacities. As a result, a misinterpretation of the current statutory language could be used as an argument to limit the activities that Wisconsin institutions can perform in other states. Amending the statute would minimize this risk.

Thank you for allowing me to testify on this important piece of legislation. I am happy to take any questions from committee members.

Chris Foregger  
Capital First Trust Company

I am with Capital First Trust Company. We are a South Dakota chartered trust company, but we have a large part of our operations in Milwaukee along with most of our employees – about 25 - including myself. Our trust company specializes in providing trust services to personal injury victims and persons with special needs. There are benefits to a South Dakota charter and a presence in Milwaukee.

As a South Dakota or out-of-state trust company, we have been registered with the Wisconsin Department of Financial Institutions. Capital First has authority from the South Dakota Division of Banking to operate a trust service office at our Milwaukee location; and we also received a Certificate of Authority from the Wisconsin DFI per Wisconsin Statute 223.12. Per the statute, a trust company bank organized in a different state may conduct business as a fiduciary in Wisconsin if it meets specific statutory requirements and is issued a Certificate of Authority by Wisconsin DFI.

Subsection 3 of the statute currently restricts fiduciary activity; however, it does not provide guidelines on what falls under fiduciary activity. In other words, permissible activity is currently unclear.

The statute already allows out-of-state trust companies to register and operate trust representative offices – typically considered “sales” offices – so the change would not increase competition for Wisconsin banks.

We are recommending the change to allow out-state-trust companies that are properly registered with the Wisconsin DFI to operate without ambiguity since fiduciary activity can be interpreted broadly and would be difficult to avoid even in representative offices.

The current language can restrict operations in Wisconsin, cause confusion for trust company employees and ultimately impact the service provided to Wisconsin clients. Additionally trust companies with operations in Wisconsin may move jobs to other states that should otherwise be located in Wisconsin.

I would add that in my discussions with our South Dakota regulatory counsel, the ambiguity in Wis. Stat. § 223.12 has the potential to create a problem for Wisconsin trust company banks operating in other states. A number of states have reciprocity statutes that allow an out-of-state trust company to operate in another state to the same extent that the state in which a trust company is organized grants authority to service in like fiduciary capacities. As a result, a misinterpretation of the current statutory language could be used as an argument to limit the activities that Wisconsin institutions can perform in other states. Amending the statute would minimize this risk.

Finally, we view the change as remaining consistent with regulatory practices. We think this clarification will be helpful to trust company businesses and employees operating in Wisconsin and ultimately better serve clients.

# DAVENPORT EVANS LAWYERS

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January 16, 2018

DIXIE K. HIEB  
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E-mail: dhieb@dehs.com

Dear Legislators:

I am writing in support of Assembly Bill 715, the proposed legislation to permit out-of-state-chartered trust companies to conduct additional activities in the State of Wisconsin.

I am an attorney with the law firm of Davenport, Evans, Hurwitz & Smith in Sioux Falls, SD. Our firm works with over 80 South Dakota-chartered trust companies, many of which also have trust service offices in other states. Many states permit an out-of-state trust company to perform fiduciary services in that state, so long as the trust company has met the registration or licensing requirements in that state, the trust company is in compliance with its home state's laws, and the home state grants reciprocity in a like manner.

I serve on the Board of three trust companies which have operations to some extent in the State of Wisconsin. In each instance, those trust companies have operated within the restrictive requirements of Wisconsin Statute 223.12, which limits the conduct of trust company activities in the State of Wisconsin by the out-of-state trust company, despite the fact that the trust company has complied with the licensing requirements of 223.12. These trust companies are examined on a regular basis by the South Dakota Division of Banking and are subject to exam by the Wisconsin Department of Financial Institutions should the Department decide to conduct such an exam. To my knowledge to date, the Department has been satisfied to rely on the extensive exams conducted by the South Dakota Division of Banking.

While each of these trust companies obtained a charter from the State of South Dakota due to South Dakota's well-developed trust law and trust company law, each trust company also provides services to Wisconsin residents. For at least one of these companies, trust services are provided primarily to Wisconsin residents. Two of the companies have established representative offices in Wisconsin, each of which required the approval of both the South Dakota Division of Banking and the Wisconsin DFI. However, despite the establishment and approval of such offices, Wisconsin Statute 223.2 places inconsistent limitations on the activities that may be conducted at such offices.

The current restrictions on the conduct of activity in Wisconsin by these companies serves to undermine the companies' ability to offer high-quality services to their Wisconsin

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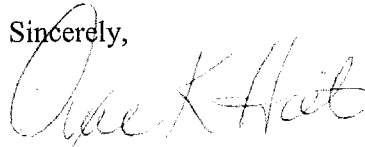
customers. It also serves to cause the companies to move jobs to South Dakota that could otherwise be located in Wisconsin.

The current restriction likely also limits the ability of Wisconsin-chartered trust companies to expand and establish trust service offices in other states. Because most states' trust service office statutes generally include a reciprocity requirement, the fact that those states permit a broader range of fiduciary activity than does Wisconsin Statute 223.12, which severely limits fiduciary activity, would make it difficult (and often impossible) to satisfy the reciprocity requirement of another state.

Approval of the proposed legislative change would result in the conduct of expanded fiduciary activity in Wisconsin and thus the retention of jobs related to that activity, expanded trust services being made available to Wisconsin residents, and expanded opportunities in other states for Wisconsin-chartered trust companies.

I therefore offer my support for Assembly Bill 715.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dixie K. Hieb".

DIXIE K. HIEB

For the Firm