



DAVID CRAIG

STATE SENATOR

Senate Committee on Revenue, Financial Institutions and Rural Issues
Public Hearing, January 10, 2018
Senate Bill 603
Senator David Craig, 28th Senate District

Dear Chairman Marklein and Committee Members,

Thank you for taking testimony on Senate Bill 603 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.

Senate Bill 603 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.

I am with Capital First Trust Company. Our trust company specializes in providing trust services to personal injury victims and persons with special needs. 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.

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.

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 a 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 to our clients.