

CERTIFICATION OF ENROLLMENT

SENATE BILL 5375

Chapter 52, Laws of 2011

62nd Legislature
2011 Regular Session

DEPARTMENT OF FINANCIAL INSTITUTIONS--AUTHORITY--TRUST COMPANIES

EFFECTIVE DATE: 07/22/11

Passed by the Senate February 28, 2011
YEAS 45 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House April 1, 2011
YEAS 92 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 13, 2011, 2:28 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5375** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 13, 2011

**Secretary of State
State of Washington**

SENATE BILL 5375

Passed Legislature - 2011 Regular Session

State of Washington

62nd Legislature

2011 Regular Session

By Senators Hobbs and Benton

Read first time 01/21/11. Referred to Committee on Financial Institutions, Housing & Insurance.

1 AN ACT Relating to the department of financial institutions'
2 regulation of trust companies; and amending RCW 30.08.025.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 30.08.025 and 2006 c 48 s 2 are each amended to read
5 as follows:

6 (1) Notwithstanding any other provision of this title, if the
7 conditions of this section are met, a bank, a trust company, or a
8 holding company of a bank or a trust company, may be organized as, or
9 convert to, a limited liability company under the Washington limited
10 liability company act, chapter 25.15 RCW. As used in this section,
11 "bank" includes an applicant to become a bank or holding company of a
12 bank, "trust company" includes an applicant to become a trust company,
13 and "holding company" means a holding company of a bank or trust
14 company.

15 (2)(a) Before a bank, trust company, or holding company may
16 organize as, or convert to, a limited liability company, the bank,
17 trust company, or holding company must obtain approval of the director.

18 (b)(i) To obtain approval under this section from the director, the
19 bank, trust company, or holding company must file a request for

1 approval with the director at least ninety days before the day on which
2 the bank, trust company, or holding company becomes a limited liability
3 company.

4 (ii) If the director does not disapprove the request for approval
5 within ninety days from the day on which the director receives the
6 request, the request is considered approved.

7 (iii) When taking action on a request for approval filed under this
8 section, the director may:

9 (A) Approve the request;

10 (B) Approve the request subject to terms and conditions the
11 director considers necessary; or

12 (C) Disapprove the request.

13 (3) To approve a request for approval, the director must find that
14 the bank, trust company, or holding company:

15 (a) Will operate in a safe and sound manner; and

16 (b) Has the following characteristics:

17 (i) The certificate of formation and limited liability company
18 require or set forth that the duration of the limited liability company
19 is perpetual;

20 (ii) The bank, trust company, or holding company is not otherwise
21 subject to automatic termination, dissolution, or suspension upon the
22 happening of some event other than the passage of time;

23 (iii) The exclusive authority to manage the bank, trust company, or
24 holding company is vested in a board of managers or directors that:

25 (A) Is elected or appointed by the owners;

26 (B) Is not required to have owners of the bank, trust company, or
27 holding company included on the board;

28 (C) Possesses adequate independence and authority to supervise the
29 operation of the bank, trust company, or holding company; and

30 (D) Operates with substantially the same rights, powers,
31 privileges, duties, and responsibilities as the board of directors of
32 a corporation;

33 (iv) Neither state law, nor the bank's, trust company's, or holding
34 company's operating agreement, bylaws, or other organizational
35 documents provide that an owner of the bank, trust company, or holding
36 company is liable for the debts, liabilities, and obligations of the
37 bank, trust company, or holding company in excess of the amount of the
38 owner's investment;

1 (v) Neither state law, nor the bank's, trust company's, or holding
2 company's operating agreement, bylaws, or other organizational
3 documents require the consent of any other owner of the bank, trust
4 company, or holding company in order for any owner to transfer an
5 ownership interest in the bank, trust company, or holding company,
6 including voting rights;

7 (vi) The bank, trust company, or holding company is able to obtain
8 new investment funding if needed to maintain adequate capital;

9 (vii) The bank, trust company, or holding company is able to comply
10 with all legal and regulatory requirements for a federally insured
11 depository bank, trust company, or holding company of a federally
12 insured depository bank, under applicable federal and state law; and

13 (viii) A bank, trust company, or holding company that is organized
14 as a limited liability company shall maintain the characteristics
15 listed in this subsection (3)(b) during such time as it is authorized
16 to conduct business under this title as a limited liability company.

17 (4)(a) All rights, privileges, powers, duties, and obligations of
18 a bank, trust company, or holding company, that is organized as a
19 limited liability company, and its members and managers are governed by
20 the Washington limited liability company act, chapter 25.15 RCW,
21 except:

22 (i) To the extent chapter 25.15 RCW is in conflict with federal law
23 or regulation respecting the organization of a federally insured
24 depository institution as a limited liability company, such federal law
25 or regulation supersedes the conflicting provisions contained in
26 chapter 25.15 RCW in relation to a bank, trust company, or holding
27 company organized as a limited liability company pursuant to this
28 section; and

29 (ii) Without limitation, the following are inapplicable to a bank,
30 trust company, or holding company organized as a limited liability
31 company:

32 (A) Permitting automatic dissolution or suspension of a limited
33 liability company as set forth in RCW 25.15.270(1), pursuant to a
34 statement of limited duration which, though impermissible under
35 subsection (3)(b)(i) of this section, has been provided for in a
36 certificate of formation;

37 (B) Permitting automatic dissolution or suspension of a limited

1 liability company, pursuant to the limited liability company agreement,
2 as set forth in RCW 25.15.270(2);

3 (C) Permitting dissolution of the limited liability company
4 agreement based upon agreement of all the members, as set forth in RCW
5 25.15.270(3);

6 (D) Permitting dissociation of all the members of the limited
7 liability company, as set forth in RCW 25.15.270(4); and

8 (E) Permitting automatic dissolution or suspension of a limited
9 liability company, pursuant to operation of law, as otherwise set forth
10 in chapter 25.15 RCW.

11 (b) Notwithstanding (a) of this subsection:

12 (i) For purposes of transferring a member's interests in the bank,
13 trust company, or holding company, a member's interest in the bank,
14 trust company, or holding company is treated like a share of stock in
15 a corporation; and

16 (ii) If a member's interest in the bank, trust company, or holding
17 company is transferred voluntarily or involuntarily to another person,
18 the person who receives the member's interest obtains the member's
19 entire rights associated with the member's interest in the bank, trust
20 company, or holding company including(~~(r)~~) all economic rights and all
21 voting rights.

22 (c) A bank, trust company, or holding company may not by agreement
23 or otherwise change the application of (a) of this subsection to the
24 bank, trust company, or holding company.

25 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this
26 section to the contrary, all voting members remain liable and
27 responsible as fiduciaries of a bank, trust company, or holding company
28 organized as a limited liability company, regardless of resignation,
29 dissociation, or disqualification, to the same extent that directors of
30 a bank, trust company, or holding company organized as a corporation
31 would be or remain liable or responsible to the department and
32 applicable federal banking regulators; and

33 (b) If death, incapacity, or disqualification of all members of the
34 limited liability company would result in a complete dissociation of
35 all members, then the bank (~~(or)~~), trust company, holding company, or
36 (~~(both)~~) all three, as applicable is deemed nonetheless to remain in
37 existence for purposes of the department or an applicable federal

1 regulator, or both, having standing under RCW 30.44.270 or applicable
2 federal law, or both, to exercise the powers and authorities of a
3 receiver for the bank, trust company, or holding company.

4 (6) For the purposes of this section, and unless the context
5 clearly requires otherwise, for the purpose of applying chapter 25.15
6 RCW to a bank, trust company, or holding company organized as a limited
7 liability company:

8 (a) "Articles of incorporation" includes a limited liability
9 company's certificate of formation, as that term is used in RCW
10 25.15.005(1) and 25.15.070, and a limited liability company agreement
11 as that term is used in RCW 25.15.005(5);

12 (b) "Board of directors" includes one or more persons who have,
13 with respect to a bank, trust company, or holding company described in
14 subsection (1) of this section, authority that is substantially similar
15 to that of a board of directors of a corporation;

16 (c) "Bylaws" includes a limited liability company agreement as that
17 term is defined in RCW 25.15.005(5);

18 (d) "Corporation" includes a limited liability company organized
19 under chapter 25.15 RCW;

20 (e) "Director" includes any of the following of a limited liability
21 company:

22 (i) A manager;

23 (ii) A director; or

24 (iii) Other person who has, with respect to the bank, trust
25 company, or holding company described in subsection (1) of this
26 section, authority substantially similar to that of a director of a
27 corporation;

28 (f) "Dividend" includes distributions made by a limited liability
29 company under RCW 25.15.215;

30 (g) "Incorporator" includes the person or persons executing the
31 certificate of formation as provided in RCW 25.15.085(1);

32 (h) "Officer" includes any of the following of a bank, trust
33 company, or holding company:

34 (i) An officer; or

35 (ii) Other person who has, with respect to the bank, trust company,
36 or holding company, authority substantially similar to that of an
37 officer of a corporation;

1 (i) "Security," "shares," or "stock" of a corporation includes a
2 membership interest in a limited liability company and any certificate
3 or other evidence of an ownership interest in a limited liability
4 company; and

5 (j) "Stockholder" or "shareholder" includes an owner of an equity
6 interest in a bank, trust company, or holding company, including a
7 member as defined in RCW 25.15.005(8) and 25.15.115.

Passed by the Senate February 28, 2011.

Passed by the House April 1, 2011.

Approved by the Governor April 13, 2011.

Filed in Office of Secretary of State April 13, 2011.