

# HOUSE BILL REPORT

## HB 2141

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### As Reported by House Committee On: Business & Financial Services

**Title:** An act relating to the modernization, clarification, reorganization, and amendment of the laws respecting the charter and regulation of Washington state nondepository trust companies, fiduciary activities and trust business of state commercial banks, alien banks, state savings banks, and state savings associations, and fiduciary activities and trust business of other trust institutions and persons engaging in trust business in this state.

**Brief Description:** Addressing banks and trust companies.

**Sponsors:** Representatives Kirby and Ryu; by request of Department of Financial Institutions.

#### **Brief History:**

##### **Committee Activity:**

Business & Financial Services: 1/17/14, 1/21/14 [DP].

#### **Brief Summary of Bill**

- Recodifies the Revised Code of Washington (RCW) Title 30 regarding banks and trust institutions into two separate titles, RCW 30A and 30B, for banks and trust institutions, respectively.
- Clarifies the regulatory powers and duties regarding trust institutions.
- Provides that Title 32 RCW is named the Washington Savings Bank Act.
- Provides that Title 33 RCW is named the Washington Savings Association Act.

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### HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

**Majority Report:** Do pass. Signed by 14 members: Representatives Kirby, Chair; Ryu, Vice Chair; Parker, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Blake, Fagan, Hawkins, Hudgins, G. Hunt, Hurst, Kochmar, MacEwen, Santos and Stanford.

**Staff:** Linda Merelle (786-7092).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## Regulation of Banks and Trust Institutions.

The statutory provisions governing banks and trust companies in Washington are codified together under Title 30 of the Revised Code of Washington. The chapters of this title govern both the conduct and regulation of banks as well as trust companies. The general provisions regarding governance, officers, employees and stockholders, investments, mergers, liquidation, and other structural and operation aspects of banks and trust companies apply to both types of entities.

The Department of Financial Institutions (Department), through its Division of Banks, regulates state-chartered commercial and savings banks, associations, and nondepository trust companies. The Office of the Comptroller of the Currency (OCC) regulates national banks and associations.

Under both state and federal laws, the various types of financial institutions that operate in Washington are subject to different regulations regarding organization, governance, and business activities. The regulations governing financial institutions include grants of powers and authorities that may be exercised by an institution with respect to corporate governance and operational matters. Generally, the types of powers and authorities held by banks and trust companies chartered in Washington are defined by reference to regulations adopted by the OCC and the Board of Governors of the Federal Reserve System (Federal Reserve).

A trust is a form of ownership of property that separates responsibility and control of the property from the benefits of ownership. Washington law defines a trust company as a corporation organized under the laws of the state engaged in trust business. In general terms, Washington law defines "trust business" as executing trusts of every description not inconsistent with the law. Trust companies also have powers and privileges conferred on banks. Private trusts are not regulated by the Department.

The Director of the Department (Director) has the power to adopt uniform rules in accordance with the Administrative Procedure Act governing examinations and reports of banks and trust companies and their reporting requirements for assets, liabilities, and reserves. The Director must mail a copy of the rules to each bank and trust company at its principal place of business.

## Subpoenas.

The Director may apply for and obtain a superior court order authorizing a subpoena in advance of its issuance. The application must state that an order is sought pursuant to the authority granted, it must specify documents, records, and evidence or testimony sought. It must also include a declaration under oath that an investigation is being conducted for a lawfully authorized purpose. No prior notice regarding issuance of the subpoena is required.

## Lending Limits.

At no time may the total loans and extensions of credit to one individual, business entity, or governmental agency exceed 20 percent of a bank or trust company's capital and surplus. Certain loans and extensions of credit are not included in this limit. The Department is

authorized to adopt rules to establish different limits or requirements for particular categories of loans and extensions of credit. Where no Department rule governs a specific type of transaction, a bank must conform to the OCC rules. These limits do not apply to savings banks.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) revised lending limits under federal law to include any credit exposure arising from derivative transactions and securities financing transactions. The Dodd-Frank Act also provided that a state-chartered bank insured by the Federal Deposit Insurance Corporation (FDIC) may only engage in derivative transactions if the state lending limits take into consideration credit exposure to derivatives. In 2012 the OCC amended its rule on lending limits to implement those changes, and the Department adopted its own rule in January 2013.

### Savings Bank.

A savings bank receives deposits and pays interest on them. It makes certain types of loans, but does not provide general banking services to consumers.

### Savings Associations.

Savings associations, also known as savings and loan associations, may be a domestic or foreign mutual association or stock association. A mutual association does not have the authority to issue stock. A stock association has the authority to issue stock. Washington currently has no state savings associations.

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## **Summary of Bill:**

Title 30 RCW is divided into two separate titles, creating the Washington State Bank Act, codified under Title 30A and the Washington Trust Institutions Act, codified under Title 30B.

### Washington State Bank Act.

Some provisions regarding the regulation of Washington banks are modified:

- Notices of rules: The provision requiring the Director to mail a copy of adopted uniform rules to the principal place of business for a bank or trust is removed.
- Publications by banks: Whenever publication is required by a bank, the bank may make such publication using the internet upon terms and conditions that the Director may adopt by rule.
- Subpoena of third parties: The Director or authorized assistants may obtain a Superior Court order for a subpoena for an entity not regulated by the Department that is involved in unauthorized banking activity or who are otherwise in violation of the provisions regulating banks.

### Washington Trust Institutions Act.

A new statutory framework for trust institutions is created. A significant number of provisions in the new framework reference and reflect regulations and requirements under the existing Title 30 RCW. The bill also creates new provisions and reorganizes existing provisions for clarity as they apply to trust companies. Many existing provisions that are currently in multiple chapters are reorganized into single chapters.

*New Provisions Regarding Trust Institutions.*

The definitions for terms relevant to state trust companies are added:

- A "trust institution" is a depository institution, foreign bank, or trust company.
- A "trust business" exists where a person holds out to the public that he or she is available to perform the powers of a state trust company and the person does so through advertisement, solicitation, or other means.
- A "trust company" is a state trust company or any other company chartered to act as a fiduciary that is not a depository institution and not a foreign bank.

Loans to Insiders and Officers: A state trust company may not make loans or extensions of credit, and it may not extend leases to any person except in relation to nonfiduciary corporate funds. Loans or extensions of credit or leases in relation to nonfiduciary funds are subject to the approval of the Director. Loans or leases may be made to insiders only to the extent permitted for state banks under Federal Reserve Board regulations.

Choice of Law: When there is a "choice of law" clause contained in a governing instrument in which a state trust company is a party, the choice of which state law governs the agreement, as agreed by the parties, controls the interpretation and the enforcement of the agreement.

Electronic Public Notice: Whenever notice by publication is required by a trust institution, the notice may be provided via internet publication upon terms and conditions set by the Director.

Scope of Director's Authority: The Director has the authority to regulate the exercise of all powers and authorities of a state trust company that are enumerated in statute. The Director also has supervision authority over out-of-state trust institutions, as provided for in cooperative agreements made by the Director with the home state's of out-of-state trust institutions.

Subpoenas: A provision regarding the subpoena power of the Director expressly applies to Washington trust institutions.

Board of Directors, Officers, and Shareholders: The duties of the Board of Directors of a state trust company and its exercise of the company's fiduciary powers are spelled out expressly. An audit committee requirement for state trust companies is established.

Out of State Trust Institutions: An out-of-state trust institution that meets the statutory requirements regarding state trust companies is not required to maintain a physical trust office in the state, and it may establish and maintain a new trust office in this state. Existing approved out-of-state trust institutions that meet certain conditions are exempt from the

requirement to provide written notice to the Director of its intent to engage in trust business in Washington and need not wait 60 days before engaging in trust business. The Director may examine and investigate out-of-state trust institutions engaged in business in Washington as the Director deems necessary to determine whether the out-of-state institution is being operated and maintained in a safe and sound manner. The Director may require periodic reports from the out-of-state trust institution.

**Private Trust Companies:** A private trust or private trust company is exempt from regulation under the Washington Trust Institutions Act. If a private trust or private trust company seeks to convert to a trust that transacts business with the general public, it must apply for and obtain a Certificate of Authority as a state trust company.

**Savings Banks:** The provisions governing savings banks under Title 32 RCW are given the short title of the "Washington Savings Bank Act." A savings bank has the same powers and authorities to engage in trust business as a state commercial bank. It is also subject to the requirements and conditions for engaging in a trust business.

**State Savings Associations:** The provisions governing savings associations under Title 33 RCW are given the short title of the "Washington Savings Association Act." A savings association may exercise the same powers and authorities as a state commercial bank to engage in trust business in Washington. There are no state savings associations in Washington.

*Reorganized Provisions.*

The persons and entities that are exempt from the requirement of obtaining a Certificate of Authority or approval under the Washington Trust Institutions Act are listed together in one provision. The following persons or entities are exempt:

- an individual, sole proprietor, or general partnership or joint venture composed of individuals;
- persons engaging in business in Washington as a national banking association or as a federal mutual savings bank, federal stock savings bank, or federal savings and loan association under authority of the OCC;
- persons acting in a manner otherwise authorized by law and within the scope of authority as an agent of a trust institution;
- persons acting as a fiduciary solely by reason of being appointed by a court to perform the duties of a trustee, guardian, conservator, or receiver;
- attorneys or limited license legal technicians who perform professional services customarily performed in a manner that is approved and authorized by the Washington State Supreme Court;
- persons acting as an escrow agent;
- persons acting as a trustee under a Deed of Trust delivered as security for payment;
- licensed real estate brokers receiving and distributing rents and proceeds of sale;
- licensed broker-dealers or investment advisors engaging in securities transactions or providing an investment advisory service;
- insurance companies or agents engaging in the sale and administration of an insurance product to the extent that the activity is regulated by the Office of the Insurance Commissioner;

- persons acting as a law trustee under a voting trust;
- persons acting as a trustee by a public, private, or independent institution of higher education;
- persons acting as a private trust or private trust company; or
- persons engaging in other activities expressly excluded by rule of the Director.

Trust Deposits and Common Trust Funds: Provisions are included to clarify that trust companies are not depositories and the circumstances under which a trust company may make deposits. The provisions regarding common trust funds are placed in one statutory provision. The provisions also codify non-statutory Department policies.

Voluntary and Involuntary Dissolution Procedures: Provisions regarding voluntary and involuntary dissolution are set forth separately. Involuntary closure procedures that relate specifically to trust institutions are added.

Trust Mergers: A new chapter is added regarding the merger of trust companies. It reflects existing law under RCW 30.53 and adds a new provision regarding the sale of a trust institution's assets.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on January 5, 2015.

**Staff Summary of Public Testimony:**

(In support) The banks and trust companies perform valuable fiduciary functions. Six commercial banks in Washington have trust requirements. Unlike some states, Washington does not regulate private trusts. Washington trust institutions laws have not been significantly revised in the last 60 years. Trust institutions laws are nontransparent and difficult to understand. Specific laws regarding trusts are comingled with the laws governing banks. The bill goes a long way towards transparency by eliminating the comingling with statutes governing state banks, and it represents the first phase in a multi-year effort. The provisions in the bill modernize state trust laws and make trust charters more attractive to both out of state and international firms. The new framework provides certainty and clear expectations. The bill makes Washington more well-known as a place that provides trust business and other wealth management services. Businesses tend to locate where there is a concentration of talent.

(Other) There were a few concerns in the initial draft of the bill, and the Department addressed every one of those concerns.

(Opposed) None.

**Persons Testifying:** (In support) Representative Kirby, prime sponsor; Richard Riccobono, Department of Financial Institutions; Erik Strom, Russell Investments.

(Other) Kathryn Leathers, Washington State Bar Association.

**Persons Signed In To Testify But Not Testifying:** None.