

SENATE BILL REPORT

SB 6135

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, January 23, 2014

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: Senators Benton, Mullet, Hatfield, Hobbs and Fain; by request of Department of Financial Institutions.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/21/14, 1/23/14 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Mullet, Vice Chair; Benton, Ranking Member; Fain, Hatfield, Nelson and Roach.

Staff: Edward Redmond (786-7471)

Background: A trust is a form of ownership of property that separates responsibility or 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 consistent with the law. Trust companies also have powers and privileges conferred on banks, but they are subject to the restriction that the Department of Financial Institutions (DFI) may require that they have FDIC insurance and be otherwise capitalized as an FDIC-insured bank before they may conduct themselves as a bank, that is, take deposits from the public.

DFI is the regulator of state-chartered banks and trust companies. In order to legally engage in trust business in the state, a non-bank corporation or limited liability company must obtain

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a trust company charter. DFI, as the primary state regulator, is responsible for oversight of the safety and soundness of such state-chartered financial institutions.

Banking and trust provisions are currently commingled under Title 30 RCW. The chapters of this title govern both the conduct and regulation of banks as well as trust companies. There are concerns regarding the transparency of banks and trust companies being regulated under the same statute. A committee of public and private stakeholders met over the interim to review the statute and made recommendations to DFI for possible amendments.

Summary of Bill: Title 30 RCW is divided into two separate acts: the Washington State Commercial Banking Act codified under Title 30A and the Washington Trust Institutions Act (WTIA), codified under Title 30B.

Washington State Bank Act. Specific provisions concerning the regulation of Washington banks are amended.

Adopted Rules Notification. The provision requiring the Director of DFI (Director) to mail a copy of adopted uniform rules to a bank or trust's principal place of business is removed, relying upon the notice conferred in the APA rulemaking process.

Bank Publications. A bank is authorized to make a required publication via internet so long as such publication is in accordance to the rules adopted by the Director.

Third-Party Subpoenas. The Director or authorized assistant may issue a superior court approved subpoena to inspect an unregulated institution suspected of unauthorized banking activities.

WTIA. A new statutory model for trust institutions is established. Numerous provisions in WTIA incorporate or reference the regulations and requirements under current law. Various provisions germane to trust institutions which are currently dispersed throughout Title 30 RCW are defragmented and clarified.

Definitions. New definitions are added:

- a trust institution is a depository institution, foreign bank, or trust company;
- a trust business refers to when a person publicizes via advertisement, solicitation, or other means that this person is available to perform the powers of a state trust company; and
- 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.

Officer and Insider Loans. A state trust company may not make loans or extensions of credit and 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 Director approval. Loans or leases to insiders may only be made to the extent permitted for state banks under Federal Reserve Board regulations.

Choice of Law. Parties to a contract containing a choice of law clause may decide which state law governs the agreement. The governing law controls the interpretation and

enforcement of the contract. If there is no such clause, Washington trust law in Title 30B RCW governs the interpretation of the trust instrument automatically.

Electronic Public Notice. Subject to the terms and conditions of the Director, any required notice from a trust institution may be provided via internet publication.

Director's Authority. The Director is authorized to regulate all the activities of a trust company that are enumerated in statute. Supervisory authority over an out-of-state trust institution is also provided to the Director. The terms of such authority are set forth in a cooperative agreement between the Director and the trust institution's home state.

Subpoena Authority. DFI may issue a superior court approved subpoena to inspect an unregulated institution suspected of unauthorized trust activity or an unregulated third-party service provider of a trust company, if relevant.

Board of Directors and Audit Committee. The duties of the Board of Directors of a state trust company, including its administration of the fiduciary powers of the state trust company are set forth in statute. An independent audit committee is established and required to audit the state trust institution at least once every calendar year.

Out-of-State Trust Institutions. An out-of-state trust institution that meets the statutory requirements regarding state trust companies is not required to but may establish and maintain a physical trust office in Washington State. Already approved out-of-state trust institutions meeting specified conditions are exempt from providing written notice to the Director of their intent to engage in trust business in Washington and may immediately engage in trust activities.

The Director may examine and investigate out-of-state trust institutions engaged in business in Washington as deemed necessary to ensure the safety and soundness of such institutions. The Director may also require periodic reports from an out-of-state trust institution.

Private Trust Companies. WTIA does not apply to a private trust or private trust company. Any private trust or private trust company seeking to convert to a trust that transacts business with the general public must first obtain a certificate of authority as a state trust company before engaging in such activity.

Savings Banks. The title "Washington Savings Bank Act" (WSBA) is established in statute. WSBA incorporates the provisions governing savings banks under Title 32 RCW. A savings bank has the same authority to engage in trust business as a state commercial bank. A savings bank is also subject to the statutory requirements for engaging in a trust business.

State Savings Associations. The title "Washington Savings Association Act" (WSAA) is created in statute. The provisions under Title 33 RCW are incorporated under WSAA. A savings association may exercise the same powers and authorities as a state commercial bank to engage in trust business in Washington.

Reorganization of Statutory Provisions. *Exemptions.* The following persons and entities are exempt from the requirement to obtain a Certificate of Authority or approval under WTIA:

- an individual, sole proprietor, or general partnership or joint venture composed of individuals;
- persons engaged 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 Office of the Comptroller of the Currency;
- 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;
- an insurance company or agent 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. Trust companies are not depositories but may take or hold deposits under limited circumstances specified under statute.

Voluntary and Involuntary Dissolution Procedures. Provisions regarding voluntary and involuntary dissolution are bifurcated in the code. Involuntary closure procedures relating specifically to trust institutions are added.

Trust Mergers. A new chapter is added regarding the merger of trust companies. Existing law under RCW 30.53 is incorporated into the new chapter and a new provision regarding the sale of a trust institution's assets is included.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Washington's trust institutions laws have not been significantly revised in at least 60 years, with Title 30 RCW being essentially a 1955 recodification of a 1929 act. While serviceable, these laws are not transparent and are only

predictable to a relatively small group of local trust institutions' managers and attorneys. Currently, the specific laws affecting non-depository trust companies are commingled in Title 30 RCW, which primarily governs chartering, examination, supervision, and enforcement related to state-chartered commercial banks. This has resulted in trust institution laws being non-transparent and little-understood. In 2011 the Economic Development Council of Seattle and King County (Enterprise Seattle) organized and commissioned a Financial Services Cluster Study. The product of that Financial Services Cluster Study was a blueprint for making Greater Seattle and Washington State an alternative global financial services hub that could eventually rival some other financial service centers within the Pacific Rim, thereby benefitting economic development generally and increasing sustainable jobs. This bill is DFI's first phase in a multi-year effort to fulfill one of Enterprise Seattle's important recommendations. The bill modernizes our state's trust charter laws to meet the goals of (1) retaining existing wealth management services in this state and (2) making our trust charter more attractive to both out-of-state and international firms which may be interested in locating their businesses here. Not only will this be an attractive environment for professional wealth managers and other professionals in the areas of law, accounting, and financial technology; it will create a far greater number of sustainable paraprofessional and administrative jobs in the financial services sector and supporting industries. It is important to note, however, that nothing in this bill would confer upon Washington any status as an asset protection state, which often acts as a shield from the collection of judgments obtained by members of the public who have been wronged. The bill had a thorough vetting and the community bankers are in full support of its passage.

OTHER: The Washington State Bar Association would like to thank DFI for working collaboratively with them on concerns it had with the initial draft. Those concerns have been addressed so thoroughly that the bill no longer impacts the practice of law.

Persons Testifying: PRO: Brad Tower, Community Bankers of WA; Rick Riccobono, DFI.

OTHER: Kathryn Leathers, Probate & Trust Council, WA State Bar Assn.