
**Consumer Protection & Business
Committee**

SB 5107

Brief Description: Addressing trust institutions.

Sponsors: Senators Das and Mullet; by request of Department of Financial Institutions.

Brief Summary of Bill

- Updates the Washington Trust Institutions Act.
- Expands doing business in Washington state to include out-of-state trust institutions that do not have a physical presence, but conduct trust business in the state.
- Provides a variety of enforcement actions that the Department of Financial Institutions (DFI) may take against trust companies.
- Defines third-party service providers as they relate to trust business and provides rulemaking authority to the DFI to initiate procedures to examine them under certain conditions.
- Provides specific guidance on certain life-cycles such as mergers and dissolutions that are specific to trusts.

Hearing Date: 3/11/19

Staff: Robbi Kesler (786-7153).

Background:

Trust Statute.

In 2014 Title 30 RCW was 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. The WTIA established a new statutory model for trust institutions. Numerous provisions in the WTIA incorporate or reference the regulations and requirements of the Commercial Banking Act.

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.

State chartered trust companies are regulated by the Department of Financial Institutions (DFI). In order to legally engage in trust business in the state, a non-bank corporation or limited liability company must obtain a trust company charter. The DFI, as the primary state regulator, is responsible for oversight of the safety and soundness of such state-chartered financial institutions. The DFI may obtain a supervisory order related to economic conditions through issuing a temporary cease and desist order under adjudicative enforcement provisions. Prudential regulation is a type of financial regulation that requires financial firms to control risks and hold adequate capital as defined by capital requirements.

Trust Companies.

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 DFI may require that they have Federal Deposit Insurance Corporation (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. Non-depository trust companies serve a different function than banks. The exercise of trust powers is neither essential to being a bank nor automatically conferred upon a bank when receiving a charter. Trust business is defined to include a variety of custodial and nonfiduciary roles including bailee, escrow agent, registrar, recordkeeper, receiver, or transfer agent. Trust companies may merge into other entities, acquire trust companies, convert to or from a federal trust company charter, liquidate voluntarily, and liquidate involuntarily.

Summary of Bill:

Definitions.

Various definitions are modified for technical updates and to include correct references to law and practice. Definitions for "savings association" and "state savings association" are deleted.

Various defined terms are amended: "Trust business" includes the performance of, in addition to holding oneself out to the public, of one or more of the statutorily defined essential functions of trust business. "Trust department" means a division, subdivision, department or group of officers and employees of a state bank authorized to exercise trust powers pursuant to authority of the DFI.

Added definitions include "agent," "federal trust institution," "shareholder," and "third-party service provider."

Pledge of Assets.

A state trust company may pledge its assets to secure the repayment of money borrowed or as specifically authorized by a statute, rule, or finding by the DFI that such conduct does not violate any other law and serves the convenience of the state trust company and the public.

Organization of Trust and Application to the Department.

A state trust company may operate either as a limited liability company or a corporation. The process and timelines for the DFI approval are outlined. The DFI must find that the state trust company will operate in a safe and sound manner.

Application requirements for a state trust company charter are amended to require background checks, including fingerprints for any officer, director, manager, or managing participant. An initial board of directors must include five persons, including two individuals who must be independent of the corporation or limited liability corporation. The statutory requirement for applicants to publish a notice of an application and for the DFI to publish a written report of its investigation into the applicants is removed. The statute is amended to provide state trust companies to have the same powers and authorities of a federally chartered trust company and of any out of state trust institution.

Trust Business.

Trust business includes essential core functions of conducting the trust business, as opposed to mere incidental activities. Trust business can include, but is not limited to:

- accepting or executing trusts;
- acting as an attorney-in-fact;
- acting pursuant to court order as executor, administrator, guardian, or conservator; and
- regularly engaging in any other activity that the DFI determines by rule to be an essential function of a trust business in the State of Washington.

The DFI is granted rulemaking authority to expand the definition of trust business to accommodate certain kinds of nonfiduciary custodial arrangements and certain technology solutions.

Doing Business in Washington State.

The term doing business in Washington state is expanded to cover out-of-state trust institutions doing business in Washington. It provides a standard that the DFI can use to determine whether an out-of-state trust institution regularly engages in trust business, and greater specificity for the requirements for an out-of-state trust institution to conduct trust business in Washington. The DFI is authorized to enter into cooperative agreements with out-of-state regulators and supervisory agreements with out-of-state trust institutions and their regulators. Washington trust companies must receive approval from the DFI to do business in other states.

Prudential Standards and Department of Financial Institutions Examination.

Existing examination practices are codified to include the regular examinations of state trust companies, the authority to make cooperative agreements with regulators, and the use of the uniform interagency trust rating system. The DFI is given rulemaking authority to the extent that it is consistent with the uniform interagency trust rating system, except for emerging business models.

Each trust company that is subject to the authority of the DFI must comply with specific statutes, rules, conditions, and directives; specific procedures for the DFI to follow in issuing orders and notices, as well as the procedure for a hearing on the notice. The DFI is also given the authority to apply to the superior court of Washington to enforce final orders. The DFI is authorized to impose fines or restitution or both. The DFI has a five-year statute of limitations on the commencement of adjudicative proceedings against state trust institutions.

Standards and Procedures for Business Operations.

Various provisions related to the business operations of a trust institution are now incorporated into the WTIA, rather than by reference to the Washington State Commercial Banking Act. Procedures for the voluntary dissolution and liquidation of a trust company are provided for both corporations and limited liability corporations. Approval is deemed granted by the DFI unless otherwise determined within 60 days. While a state trust company is in the process of voluntary liquidation, it is subject to examination by the DFI and the company must continue to furnish to the DFI the reports required of a state trust company. Specific procedures for state trust companies being involuntarily dissolved are provided, and the DFI's powers and required actions in such proceedings provide for judicial review of the DFI's right to take possession and allow objections by interested persons to claims against the state trust company. Process for changes in control, including mergers, are detailed.

Third-Party Service Providers.

Third-party service providers are defined to include an independent contractor or other person in which a trust institution has engaged to perform services to facilitate the conduct of its business as a trust institution or affiliate, to perform functions such as data storage, Internet related services, data processing services, fiduciary activities, activities related to trading securities, bookkeeping, and data analytics. Rulemaking is authorized to examine standards for third-party servicers. Under limited circumstances, the DFI may directly examine third-party service providers and authorize the issuance of prohibition against state trust institutions from continuing to use the services of a third-party service provider whenever such a provider engages in unsafe or unsound practices, or a state trust institution or its affiliate has suffered or is likely to suffer substantial financial loss by reason of a violation or practice by a third-party service provider.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.