

Amendment No. 784

Assembly Amendment to Senate Bill No. 310 First Reprint (BDR 55-788)

Proposed by: Assembly Committee on Commerce and Labor**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 310 (§§ 7, 15, 30 & NRS 669.250).

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

DP/WLK



Date: 5/18/2009

S.B. No. 310—Revises provisions governing the regulation of trust companies.
(BDR 55-788)



SENATE BILL NO. 310—SENATOR CARE

MARCH 16, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing the regulation of trust companies.
(BDR 55-788)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trust companies; establishing various requirements for licensing as a retail trust company; establishing certain minimum capital requirements for trust companies; authorizing the Commissioner of Financial Institutions to take various actions relating to the regulation of trust companies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Sections 3, 4, 6-8, 12-14, 16, 18, 25-27 and 30-36 of this bill revise various provisions governing the licensing and conduct of retail trust companies.

Sections 15-21, 31 and 35 of this bill authorize the Commissioner of Financial Institutions to take various actions concerning the activities of retail trust companies and the enforcement of chapter 669 of NRS.

Section 26 of this bill revises the minimum requirements for the amount of capital that must be held by trust companies.

Section 30 of this bill revises various fees relating to the licensing of retail trust companies.

Section 11 of this bill makes certain information provided to the Division of Financial Institutions of the Department of Business and Industry confidential in certain circumstances.

Section 9 of this bill authorizes the Commissioner to be a signatory to the Nationwide Cooperative Agreement for Supervision and Examination of Multi-State Trust Institutions as adopted by the Conference of State Bank Supervisors.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 669 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 21, inclusive, of this act.

Sec. 2. 1. “Family trust company” means a ~~nondepository trust company which is organized and licensed under this chapter by a designated relative to engage in trust company business with one or more family members and which~~

~~does not transact business with the general public;~~ corporation or limited-liability company that:

(a) Acts or proposes to act as a fiduciary;

(b) Is organized or qualified to do business in this State to serve family members; and

(c) Does not:

(1) Transact trust company business with;

(2) Propose to act as a fiduciary for; or

(3) Solicit trust company business from,

↳ a person who is not a family member.

2. As used in this section:

(a) "Designated relative" means the ~~person who is so designated in the application for a license under NRS 669.150;~~ common ancestor of the family, who may be either a living or deceased person. With regard to:

(1) A licensed family trust company or a family trust company applying to be licensed pursuant to this chapter, the designated relative is the person who is designated in the application for a license under this chapter or in the annual renewal of a license.

(2) A family trust company other than a family trust company described in subsection 1, the designated relative is any person designated by the family trust company in a letter to the Commissioner sent by certified mail, return receipt requested.

(b) "Family member" ~~means~~ includes, without limitation, the designated relative and:

(1) Any person within the ~~fifth~~ tenth degree of lineal kinship to the designated relative;

(2) Any person within the ninth degree of collateral kinship to the designated relative;

(3) Any nonfamily member who is an individual beneficiary under a will or trust created by a family member specified in subparagraph (1) or (2), including the spouse and issue of that person;

(4) The spouse and any former spouse of the designated relative;

~~(4) A spouse~~ or of any person qualifying as a family member under subparagraph (1) or (2);

(5) Any person within the fifth degree of lineal kinship of ~~the~~ a spouse or former spouse identified in subparagraph (3) ~~or~~ (4);

(6) A ~~company controlled by one or more family members, who possess, directly or indirectly, the power to direct or cause the direction of the management and policies of the company, whether through the ownership of voting securities, by contract or otherwise;~~

(7) A family affiliate and the officers, managers and directors of that family affiliate and their immediate families;

(7) An inter vivos or testamentary trust established by a family member either individually or jointly with a spouse or third party and any trustee, advisor or other person assisting with administration of that trust;

(8) An inter vivos or testamentary trust established by a ~~family member or by a~~ person who is not a family member if noncharitable beneficiaries ~~who are~~ of that trust include family members; ~~represent a majority interest in the trust;~~

~~(8) (9) The estate of a family member; ~~or~~~~

~~(9) (10) The estate of a nonfamily member if the noncharitable beneficiaries of that estate include family members; and~~

(11) A charitable foundation, charitable trust or charitable entity created by of which a family member is an organizer, incorporator, officer, member of the governing board, trustee, major donor or noncharitable beneficiary and the officers, directors, individual trustees and managers of that foundation, trust or entity and their immediate families.

3. For the purposes of this section:

(a) A family member is not a member of the public.

(b) A legally adopted person must be treated as a natural child of the adoptive parents.

(c) A stepchild must be treated as a natural child of the family member who is or was the stepparent of that child.

(d) Children of a spouse of a family member must be treated as natural children of that family member.

(e) Degrees are calculated by adding the number of steps from the designated relative through each person to the family member either directly, in the case of lineal kinship, or through the common ancestor, in the case of collateral kinship. As used in this paragraph:

(1) "Collateral kinship" means a relationship that is not lineal but stems from a common ancestor.

(2) "Lineal kinship" means a family member who is in the direct line of ascent or descent from the designated relative.

Sec. 2.3. "Grandfathered trust company" means a trust company that:

1. Held a license pursuant to this chapter on March 16, 2009; or

2. Filed an application for a license pursuant to this chapter with the Commissioner on or before March 16, 2009, and held such license on October 1, 2009.

Sec. 2.7. 1. "Noncustodial trust company" means a grandfathered trust company that:

(a) Does not manage, or advise regarding, in the aggregate, more than \$100,000,000 worth of a client's assets;

(b) Does not have custody or control of ~~a client's~~ clients' assets that exceed 20 percent of the total assets that the trust company manages for ~~that client~~ all clients; and

(c) To the extent that the trust company has custody or control of a client's assets, invests such assets pursuant to:

(1) Direction by the client; or

(2) The prudent investor standards of NRS 164.700 to 164.775, inclusive.

2. For the purposes of this section:

(a) "Advise" means to provide investment advice.

(b) "Control" means the ability to invest or transfer cash or any other asset in a fiduciary or client account to any person other than:

(1) In the case of an account for which the trust company acts as fiduciary, the settlor or beneficiary; and

(2) In the case of any other account of a client, the owner of the account.

(c) "Manage" means the exercise of discretion regarding investments, whether or not that discretion is delegated to another person.

Sec. 3. "Retail trust company" means an entity which is licensed under this chapter, ~~and engaged in a trust company business in this State.~~

Sec. 4. 1. A retail trust company licensed in this State shall maintain its principal office in this State.

2. The conditions for a retail trust company to fulfill the requirements of subsection 1 include, but are not limited to:

1 (a) A verifiable physical office in this State that conducts such business
2 operations in this State as are necessary to administer trusts in this State;

3 (b) The presence of an employee that is a resident of Nevada in the principal
4 office who has experience that is satisfactory to the Commissioner in accepting
5 and administering trusts;

6 (c) Maintenance of originals or true copies of all material business records
7 and accounts of the retail trust company which may be accessed and are readily
8 available for examination by the Division of Financial Institutions;

9 (d) Maintenance of the required cash portion of the stockholders' equity
10 pursuant to NRS 669.100 in accounts with one or more banks or other financial
11 institutions located in this State;

12 (e) The provision of services to residents of this State consistent with the
13 business plan provided by the trust company with its license application; and

14 (f) Such other conditions that the Commissioner may require to protect the
15 public interest.

16 Sec. 5. (Deleted by amendment.)

17 Sec. 6. 1. The Commissioner may conduct a pre-opening examination of
18 a retail trust company and, in rendering a decision on an application for a license
19 as a retail trust company, consider:

20 (a) The proposed market or markets to be served and, if they extend outside
21 of this State, any exceptional risk, examination or supervision concerns
22 associated with such markets;

23 (b) Whether the proposed organizational and capital structure and the
24 amount of initial capital appear adequate in relation to the proposed business and
25 market or markets, including, without limitation, the average level of assets under
26 management and administration projected for each of the first 3 years of
27 operation;

28 (c) Whether the anticipated volume and nature of business indicate a
29 reasonable probability of success and profitability based on the market or
30 markets proposed to be served;

31 (d) Whether the proposed officers and directors or managers of the proposed
32 retail trust company, as a group, have sufficient experience, ability, standing and
33 competence and whether each individually has sufficient trustworthiness and
34 integrity to justify a belief that the proposed retail trust company will be free from
35 improper or unlawful influence and otherwise will operate in compliance with
36 the law and applicable fiduciary duties and that success of the proposed retail
37 trust company is reasonably probable;

38 (e) Whether any investment services to trusts, estates, charities, employee
39 benefit plans and other fiduciary accounts or to natural persons, partnerships,
40 limited-liability companies and other entities, including, without limitation,
41 providing investment advice with or without discretion or selling investments in
42 or investment products of affiliated or nonaffiliated persons, will be conducted in
43 compliance with all applicable fiduciary standards, including, without limitation,
44 NRS 164.700 to 164.775, inclusive, the duty of loyalty and disclosure of material
45 information;

46 (f) Whether the proposed retail trust company will be exempt from
47 registration under the Investment Advisers Act of 1940, 15 U.S.C. § 80a-1 et seq.,
48 and any similar state laws in each state where it would otherwise be required to
49 register and, if not, whether it will comply with such registration requirements
50 before commencing business and thereafter will comply with all federal and state
51 laws and regulations applicable to it, its employees and representatives as a
52 registrant under such laws;

(g) Whether the proposed retail trust company will obtain suitable annual audits by qualified outside auditors of its books and records and its fiduciary activities under applicable account rules and standards as well as suitable internal audits; and

(h) Any other factors that the Commissioner may require.

2. The Commissioner may require a retail trust company to maintain capital in excess of the minimum required either initially or at any subsequent time based on his assessment of the risks associated with the retail trust company's business plan or any other circumstances revealed in the application, his investigation of the application or any examination of or filing by the retail trust company thereafter, including any examination before the opening of the retail trust company for business. In making such a determination, the Commissioner may consider:

(a) The nature and type of business proposed to be conducted by the retail trust company;

(b) The nature and liquidity of assets proposed to be held in its own account;

(c) The amount of fiduciary assets projected to be under management or under administration of the retail trust company;

(d) The type of fiduciary assets proposed to be held and any proposed depository of such assets;

(e) The complexity of fiduciary duties and degree of discretion proposed to be undertaken by the retail trust company;

(f) The competence and experience of proposed management of the retail trust company;

(g) The extent and adequacy of proposed internal controls;

(h) The proposed presence or absence of annual audits by an independent certified public accountant, and the scope and frequency of such audits, whether they result in an opinion of the accountant and any qualifications to the opinion;

(i) The reasonableness of business plans for retaining or acquiring additional equity capital;

(j) The existence and adequacy of insurance proposed to be obtained by the retail trust company for the purpose of protecting its fiduciary assets;

(k) The success of the retail trust company in achieving the financial projections submitted with its licensing application;

(l) The fulfillment by the retail trust company of its representations and its descriptions of its business structures and methods and management set forth in its licensing application; and

(m) Any other factor that the Commissioner may require.

Sec. 7. 1. A license issued pursuant to this chapter is not transferable or assignable. Upon approval of the Commissioner, a licensee may merge or consolidate with, or transfer its assets and control to, another entity that has been issued a license under this chapter. In making a determination regarding whether to grant such approval, the Commissioner may consider the factors set forth in paragraphs (a) to (m), inclusive, of subsection 2 of section 6 of this act.

2. If there is a change in control of any retail trust company, the chief executive officer or managing member of the retail trust company shall report the fact and the person obtaining control to the Commissioner within 5 business days after obtaining knowledge of the change.

3. A retail trust company shall, within 5 business days after there is a change in the chief executive officer, managing member or a majority of the directors or managing directors of the retail trust company, report the change to the Commissioner. The retail trust company shall include in its report a statement of the past and current business and professional affiliations of each new chief

1 executive officer, managing member, director or managing director. A new chief
2 executive officer, managing member, director or managing director shall furnish
3 to the Commissioner a complete financial statement on a form prescribed by the
4 Commissioner.

5 4. A person who acquires control as a result of a change of control of a
6 retail trust company shall submit an application to the Commissioner. The
7 application must be submitted on a form prescribed by the Commissioner. The
8 Commissioner shall conduct an investigation to determine whether the person
9 has a good reputation for honesty, trustworthiness and integrity and is competent
10 to transact the business of a trust company in a manner which protects the
11 interests of the general public.

12 5. The retail trust company with which the applicant described in
13 subsection 4 is affiliated shall pay the nonrefundable cost of the investigation as
14 the Commissioner requires. If the Commissioner denies the application, he may
15 forbid or limit the applicant's participation in the business of the trust company.

16 6. As used in this section, "control" means the possession, directly or
17 indirectly, of the power to direct or cause the direction of the management and
18 policy of a retail trust company, or a change in the ownership of at least 25
19 percent of the outstanding voting stock of, or participating members' interest in, a
20 retail trust company.

21 **Sec. 8. 1.** It is unlawful for any retail trust company licensed in this State
22 to engage in trust company business at any office outside this State without the
23 prior approval of the Commissioner.

24 2. Before the Commissioner will approve a branch to be located in another
25 state, the retail trust company must:

26 (a) Obtain from that state a license as a trust company; or

27 (b) Meet all the requirements to ~~operate~~ do business as a trust company at
28 an office in that state.

29 **Sec. 9.** The Commissioner is authorized to be, on his own behalf and that
30 of the Division of Financial Institutions, a signatory to the Nationwide
31 Cooperative Agreement for Supervision and Examination of Multi-State Trust
32 Institutions as adopted by the Conference of State Bank Supervisors and exercise
33 his discretion in the supervision of multi-state trust institutions consistently with
34 that agreement.

35 **Sec. 10. 1.** The Commissioner may require a licensee to provide an
36 audited financial statement prepared by an independent certified public
37 accountant licensed to do business in this State.

38 2. On the fourth Monday in January of each year, each licensee shall
39 submit to the Commissioner a list of stockholders required to be maintained
40 pursuant to paragraph (c) of subsection 1 of NRS 78.105 or the list of members
41 required to be maintained pursuant to paragraph (a) of subsection 1 of NRS
42 86.241, verified by the president or a manager, as appropriate.

43 3. The list of members required to be maintained pursuant to paragraph (a)
44 of subsection 1 of NRS 86.241 must include the percentage of each member's
45 interest in the company, in addition to the requirements set forth in that section.

46 4. Except as otherwise provided in NRS 239.0115, any document submitted
47 pursuant to this section is confidential.

48 **Sec. 11.** Except as otherwise provided in NRS 239.0115, any application
49 and personal or financial records submitted by a person pursuant to the
50 provisions of this chapter and any personal or financial records or other
51 documents obtained by the Division of Financial Institutions pursuant to an
52 examination or audit conducted by the Division are confidential and may be
53 disclosed only to:

1 1. The Division, any authorized employee of the Division and any state or
2 federal agency investigating the activities covered under the provisions of this
3 chapter; and

4 2. Any person when the Commissioner, in his discretion, determines that
5 the interests of the public that would be protected by disclosure outweigh the
6 interest of any person in the confidential information not being disclosed.

7 Sec. 12. The Commissioner may direct that the board of directors or
8 managers of a retail trust company meet at least quarterly in regular meetings to
9 review the books, records, funds and securities held by the retail trust company in
10 its individual and fiduciary capacities and maintain a written record of those
11 meetings for review by the Division.

12 Sec. 13. 1. Except as otherwise provided in subsection 3, the affairs and
13 business of a retail trust company organized as a corporation under the laws of
14 this State must be managed or controlled by a board of directors of not less than
15 five in number who must be selected by the stockholders at the annual meeting of
16 stockholders in such manner as may be provided by the bylaws of the
17 corporation.

18 2. Except as otherwise provided in subsection 3, the affairs and business of
19 a retail trust company organized as a limited-liability company under the laws of
20 this State must be managed or controlled by no fewer than five managers selected
21 from the members as provided in the operating agreement.

22 3. The Commissioner may authorize a retail trust company to be managed
23 or controlled by no fewer than three directors or managers, as appropriate.

24 4. The board of directors or managers of a noncustodial trust company
25 must be not less than three in number unless a smaller number is authorized by
26 the Commissioner.

27 Sec. 14. 1. No person is eligible to serve as a director or manager of any
28 retail trust company unless he:

29 (a) Displays the competence and integrity to transact the business of the
30 retail trust company in a manner which safeguards the interests of the general
31 public; and

32 (b) Has a financial status consistent with his responsibilities to the public.

33 2. The Commissioner may require any or all new directors or managing
34 directors of a retail trust company to provide such financial and biographical
35 information and verification thereof as he deems appropriate, including the
36 completion of any forms required to be completed in connection with the
37 licensing of a retail trust company.

38 Sec. 15. 1. For the purpose of discovering violations of this title or of
39 securing information required under this chapter, the Commissioner or his duly
40 authorized representatives may at any time investigate the business and examine
41 the books, accounts, papers and records used therein of:

42 (a) Any licensee;

43 (b) Any other person engaged in an activity for which a license is required
44 pursuant to the provisions of this chapter; and

45 (c) Any person that the Commissioner has reasonable cause to believe is
46 violating or is about to violate any provision of this chapter, whether or not the
47 person claims to be within the authority or beyond the scope of this chapter.

48 2. For the purpose of examination, the Commissioner or his authorized
49 representatives must have and be given free access to the offices and places of
50 business, files, safes and vaults of such persons.

51 3. The Commissioner may require the attendance of any person and
52 examine him under oath regarding:

1 (a) Any transaction or business regulated pursuant to the provisions of this
2 chapter; or

3 (b) The subject matter of any audit, examination, investigation or hearing.

4 **Sec. 16.** The Commissioner may require the immediate removal from office
5 of any officer, director, manager or employee of any retail trust company doing
6 business under this chapter who is found to be dishonest, incompetent or reckless
7 in the management of the affairs of the retail trust company, or who persistently
8 violates the laws of this State or the lawful orders, instructions and regulations
9 issued by the Commissioner.

10 **Sec. 17.** (Deleted by amendment.)

11 **Sec. 18. 1.** The Commissioner may institute disciplinary action or
12 forthwith initiate proceedings to take possession of the business and property of
13 any retail trust company when it appears that the retail trust company:

14 (a) Has violated its charter or any state or federal laws applicable to the
15 business of a trust company.

16 (b) Is conducting its business in an unauthorized or unsafe manner.

17 (c) Is in an unsafe or unsound condition to transact its business.

18 (d) Has an impairment of its stockholders' equity.

19 (e) Has refused to pay or transfer account assets to its account holders as
20 required by the terms of the accounts' governing instruments.

21 (f) Has become insolvent.

22 (g) Has neglected or refused to comply with the terms of a lawful order of the
23 Commissioner.

24 (h) Has refused, upon proper demand, to submit its records, affairs and
25 concerns for inspection and examination of an appointed or authorized examiner
26 of the Commissioner.

27 (i) Has made a voluntary assignment of its assets to receivers, conservators,
28 trustees or creditors without complying with NRS 669.230.

29 (j) Has failed to pay a tax as required pursuant to the provisions of chapter
30 363A of NRS.

31 (k) Has materially and willfully breached its fiduciary duties to its customers.

32 (l) Has failed to properly disclose all fees, interest and other charges to its
33 customers.

34 (m) Has willfully engaged in material conflicts of interest regarding a
35 customer's account.

36 (n) Has made intentional material misrepresentations regarding any aspect
37 of the services performed or proposed to be performed by the retail trust
38 company.

39 2. The Commissioner also may forthwith initiate proceedings to take
40 possession of the business and property of any trust company when it appears
41 that the officers of the trust company have refused to be examined upon oath
42 regarding its affairs.

43 **Sec. 19.** If the Commissioner finds that probable cause for revocation of
44 any license exists and that enforcement of the provisions of this chapter requires
45 immediate suspension of a license pending investigation, he may, upon 5 days'
46 written notice and a hearing, enter an order suspending a license for a period not
47 exceeding 20 days, pending a hearing upon the revocation.

48 **Sec. 20. 1.** Whenever the Commissioner has reasonable cause to believe
49 that any person is violating or is threatening to or intends to violate any provision
50 of this chapter, he may, in addition to all actions provided for in this chapter and
51 without prejudice thereto, enter an order requiring the person to desist or to
52 refrain from such violation.

2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.

3. In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which an action is brought may impound, and appoint a receiver for, the property and business of the defendant, including books, papers, documents and records pertaining thereto, or so much thereof as a court may deem reasonably necessary to prevent violations of this chapter through or by means of the use of property and business, whether such books, papers, documents and records are in the possession of the defendant, a registered agent acting on behalf of the defendant or any other person. A receiver, when appointed and qualified, has such powers and duties as to custody, collection, administration, winding up and liquidation of such property and business as may from time to time be conferred upon him by the court.

4. If a receiver is appointed pursuant to subsection 3, such receiver shall remit to the owners, members or shareholders of the retail trust company any amount of equity and capital of the retail trust company remaining after discharge of the liabilities and payment of the normal, prudent and reasonable expenses of the receivership.

Sec. 21. 1. If the Commissioner has reason to believe that grounds for revocation or suspension of a license exist, he shall give at least 20 days' written notice to the licensee stating the contemplated action and, in general, the grounds therefor and set a date for a hearing.

2. At the conclusion of a hearing, the Commissioner shall:

(a) Enter a written order dismissing the charges, revoking the license or suspending the license for a period of not more than 60 days, which period must include any prior temporary suspension. The Commissioner shall send a copy of the order to the licensee by registered or certified mail.

(b) Impose upon the licensee an administrative fine of not more than \$10,000 for each violation by the licensee of any provision of this chapter or any regulation adopted pursuant thereto.

(c) If a fine is imposed pursuant to this section, enter such order as is necessary to recover the costs of the proceeding, including his investigative costs and attorney's fees.

3. The grounds for revocation or suspension of a license are that:

(a) The licensee has failed to pay the annual license fee;

(b) The licensee, either knowingly or without any exercise of due care to prevent it, has violated any provision of this chapter or any regulation adopted pursuant thereto or any lawful order of the Division of Financial Institutions;

(c) The licensee has failed to pay a tax as required pursuant to the provisions of chapter 363A of NRS;

(d) Any fact or condition exists which would have justified the Commissioner in denying the licensee's original application for a license pursuant to the provisions of this chapter; or

(e) The licensee:

(1) Failed to open an office for the conduct of the business authorized by his license within 180 days after the date his license was issued; or

(2) Has failed to remain open for the conduct of the business for a period of 30 days without good cause therefor.

4. An order suspending or revoking a license becomes effective 5 days after being entered unless the order specifies otherwise or a stay is granted.

1 **Sec. 22.** NRS 669.020 is hereby amended to read as follows:

2 669.020 As used in this chapter, unless the context otherwise requires, the
3 words and terms defined in NRS 669.029 to 669.070, inclusive, *and sections 2 to 3,*
4 *inclusive, of this act* have the meanings ascribed to them in those sections.

5 **Sec. 23.** NRS 669.045 is hereby amended to read as follows:

6 669.045 1. “Fiduciary” means a trustee, executor, administrator, guardian of
7 an estate, *personal representative*, conservator, assignee for the benefit of creditors,
8 receiver, depository or person that receives on deposit money or property from a
9 public administrator under any provision of this chapter or from another fiduciary.

10 2. *As used in this section, “administrator” includes servicers or*
11 *administrators of individual retirement accounts within the meaning of section*
12 *408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), where the*
13 *servicer or administrator holds itself out to the public for performance of such*
14 *services and holds or maintains an ownership interest in the servicing rights of*
15 *such accounts, or possesses or controls any of the assets of such accounts,*
16 *including cash.*

17 **Sec. 24.** NRS 669.080 is hereby amended to read as follows:

18 669.080 1. This chapter does not apply to a person who:

19 (a) Does business under the laws of this State, the United States or another
20 state relating to banks, savings banks, savings and loan associations or thrift
21 companies, but if the *trust company* business conducted in this State is not subject
22 to supervision by a regulatory authority of another jurisdiction, the person must be
23 licensed pursuant to this chapter ~~and~~ *before engaging in such business in this State;*

24 (b) Is appointed as a fiduciary pursuant to NRS 662.245;

25 (c) Is acting in the performance of his duties as an attorney at law;

26 (d) Acts as a trustee under a deed of trust;

27 (e) Acts as a registered agent for a domestic or foreign corporation, limited-
28 liability company, limited partnership or limited-liability partnership;

29 (f) Acts as a trustee of a trust holding real property for the primary purpose of
30 facilitating any transaction with respect to real estate if he is not regularly engaged
31 in the business of acting as a trustee for such trusts;

32 (g) Engages in the business of a collection agency pursuant to chapter 649 of
33 NRS;

34 (h) Engages in the business of an escrow agency, escrow agent or escrow
35 officer pursuant to the provisions of chapter 645A or 692A of NRS;

36 (i) Acts as a trustee of a trust created for charitable or nonprofit purposes if he
37 is not regularly engaged in the business of acting as trustee for such trusts;

38 (j) Receives money or other property as a real estate broker licensed under
39 chapter 645 of NRS on behalf of a principal;

40 (k) Engages in transactions as a broker-dealer or sales representative pursuant
41 to chapter 90 of NRS;

42 (l) Acts as a fiduciary under a court trust;

43 (m) Does business as an insurer authorized to issue policies of life insurance
44 and annuities or endowment contracts in this State and is subject to regulation and
45 control of the Commissioner of Insurance; ~~for~~

46 (n) Acts as a fiduciary ~~for~~

47 ~~(1) The fiduciary relationship is not one of his principal occupations; or~~

48 ~~(2) He serves as a fiduciary for a relative by blood or marriage.] as an~~
49 *individual; or*

50 (o) *Acts as a family trust company, unless the family trust company is*
51 *licensed under this chapter. A family trust company which is not licensed under*
52 *the provisions of this chapter shall be deemed not to be engaged in trust company*
53 *business for the purposes of this chapter.*

2. A bank, savings bank, savings and loan association or thrift company claiming an exemption from this chapter pursuant to paragraph (a) of subsection 1 must notify the Commissioner of Financial Institutions of its intention to engage in the business of a trust company in this State and present proof satisfactory to the Commissioner of Financial Institutions that its fiduciary activities in this State will be subject to regulation by another jurisdiction.

Sec. 25. NRS 669.090 is hereby amended to read as follows:

669.090 It is unlawful for any ~~{person}~~ *retail trust company* to engage in the business of a trust company without complying with the provisions of this chapter and having a license issued by the Commissioner.

Sec. 26. NRS 669.100 is hereby amended to read as follows:

669.100 *1. No retail trust company may be organized or operated with a stockholders' equity of less than ~~{ \$300,000; }~~ \$1,000,000, or in such greater amount as may be required by the Commissioner. The full amount of the initial stockholders' equity must be paid in cash, exclusive of all organization expenses, before the trust company is authorized to commence business.*

2. A retail trust company shall maintain at least 50 percent of its required stockholders' equity in cash unless the Commissioner approves a smaller amount. The remaining 50 percent of its required stockholders' equity may be a different form of readily marketable securities or with prior approval by the Commissioner other liquid, secure asset, bond, surety or insurance, or some combination of the foregoing.

3. Any grandfathered trust company other than a noncustodial trust company that does not have the minimum capital required by this section as of October 1, 2009, shall:

(a) Except as otherwise determined by the Commissioner, increase its capital to a minimum of:

(1) By October 1, 2010, \$500,000;

(2) By October 1, 2011, \$750,000; and

(3) By October 1, 2012, \$1,000,000; and

(b) Maintain \$500,000 of such minimum capital in cash on and after October 1, 2010.

4. Any noncustodial trust company that does not have the minimum capital required by this section as of October 1, 2009, shall:

(a) Except as otherwise determined by the Commissioner, increase its capital to a minimum of:

(1) By October 1, 2010, \$350,000;

(2) By October 1, 2011, \$400,000; and

(3) By October 1, 2012, \$500,000; and

(b) Maintain 50 percent of such minimum capital in cash on and after October 1, 2010.

5. As used in this section, "in cash" means in depository accounts with one or more banks in this State.

Sec. 27. NRS 669.130 is hereby amended to read as follows:

669.130 A *retail* trust company shall not transact business, except business that is incidental to its organization, until it is authorized by the Commissioner to commence the business of a trust company as provided in this chapter.

Sec. 28. NRS 669.150 is hereby amended to read as follows:

669.150 *1. An applicant must file an application for a license to transact trust company business with the Commissioner on forms prescribed by the Commissioner, which must contain or be accompanied by such information as the Commissioner requires.*

2. A nonrefundable fee of not more than \$2,000 must accompany the application. The applicant must also pay such reasonable additional expenses incurred in the process of investigation as the Commissioner deems necessary. In addition, a fee of not less than \$200 or more than \$500, prorated on the basis of the licensing year as provided by the Commissioner, must be paid at the time of making the application.

3. ~~Except as otherwise provided in section 8 of this act, a~~ trust company may maintain offices in this and other states. For every branch location of a trust company organized under the laws of this State, and every branch location in this State of a foreign trust company authorized to do business in this State, a request for approval and licensing must be filed with the Commissioner on such forms as he prescribes. A nonrefundable fee of not more than \$500 must accompany each request. In addition, a fee of not more than \$200, prorated on the basis of the licensing year as provided by the Commissioner, must be paid at the time of making the request.

4. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section. All money received by the Commissioner pursuant to this section must be placed in the Investigative Account *for Financial Institutions* created by NRS 232.545.

5. The Commissioner shall consider an application to be withdrawn if the Commissioner has not received all information and fees required to complete the application within 12 months after the date the application is first submitted to the Commissioner or within such later period as the Commissioner determines in accordance with any existing policies of joint regulatory partners. If an application is deemed to be withdrawn pursuant to this subsection or if an applicant otherwise withdraws an application, the Commissioner may not issue a license to the applicant unless the applicant submits a new application and pays any required fees.

Sec. 29. NRS 669.160 is hereby amended to read as follows:

669.160 1. Within ~~60~~ 90 days after the application for a license is filed, the Commissioner shall investigate the facts of the application and the other requirements of this chapter to determine:

(a) That the persons who will serve as directors or officers of the corporation, or the managers or members acting in a managerial capacity of the limited-liability company, as applicable:

(1) Have a good reputation for honesty, trustworthiness and integrity and display competence to transact the business of a trust company in a manner which safeguards the interests of the general public. The applicant must submit satisfactory proof of these qualifications to the Commissioner.

(2) Have not been convicted of, or entered a plea of nolo contendere to, a felony or any crime involving fraud, misrepresentation or moral turpitude.

(3) Have not made a false statement of material fact on the application.

(4) Have not *been an officer or member of the board of directors for an entity which* had a license ~~that was~~ issued pursuant to the provisions of this chapter *that was* suspended or revoked within the 10 years immediately preceding the date of the application ~~it~~ , *and in the reasonable judgment of the Commissioner, there is evidence that the officer or member of the board of directors materially contributed to the actions resulting in the license suspension or revocation.*

(5) Have not *been an officer or member of the board of directors for a company which* had a license as a trust company which was issued in any other state, district or territory of the United States or any foreign country suspended or revoked within the 10 years immediately preceding the date of the application ~~it~~ , *and in the reasonable judgment of the Commissioner, there is evidence that the*

officer or member of the board of directors materially contributed to the actions resulting in the license suspension or revocation.

(6) Have not violated any of the provisions of this chapter or any regulation adopted pursuant to the provisions of this chapter.

(b) That the financial status of the directors and officers of the corporation or the managers or members acting in a managerial capacity of the limited-liability company is consistent with their responsibilities and duties.

(c) That the name of the proposed company complies with the provisions of NRS 657.200.

(d) That the initial stockholders' equity is not less than the required minimum.

(e) That the applicant has retained the employee required by paragraph (b) of subsection 2 of section 4 of this act.

2. Notice of the entry of an order refusing a license to a trust company must be given in writing, served personally or sent by certified mail ~~[or by telegram]~~ to the company affected. The company, upon application, is entitled to a hearing before ~~[a hearing officer appointed by the Director of the Department of Business and Industry,]~~ *the Commissioner*, but if no such application is made within 30 days after the entry of an order refusing a license to any company, the Commissioner shall enter a final order.

3. ~~[If the hearing officer affirms the]~~ *The* order of the Commissioner ~~[refusing the license, the applicant may file a petition for]~~ *is final for the purposes of* judicial review. ~~[pursuant to NRS 233B.130.]~~

Sec. 30. NRS 669.190 is hereby amended to read as follows:

669.190 1. The initial fee to be paid for a *retail* trust company license ~~[must be in proportion to the initial stockholders' equity of the trust company as follows:~~

~~—(a) A trust company with an initial stockholders' equity of not less than \$300,000 but not more than \$500,000 must pay a license fee of not more than \$1,000.~~

~~—(b) A trust company with an initial stockholders' equity of more than \$500,000 but not more than \$1,000,000 must pay a license fee of not more than not more than \$1,500.~~

~~—(c) A trust company with an initial stockholders' equity of more than \$1,000,000 must pay a license fee of not more than \$2,000.]~~ *must not be more than \$3,000.*

2. In addition, every *retail* trust company must pay an initial license fee of not more than ~~[\$200]~~ *\$500* for each branch office that is authorized by the Commissioner.

3. Thereafter, every *retail* trust company must pay annually on or before April 1 of each year a license fee ~~[which must be in proportion to its existing stockholders' equity as follows:~~

~~—(a) A trust company with an existing stockholders' equity of not less than \$300,000 but not more than \$500,000 must pay a license fee of not more than \$1,000.~~

~~—(b) A trust company with an existing stockholders' equity of more than \$500,000 but not more than \$1,000,000 must pay a license fee of not more than \$1,500.~~

~~—(c) A trust company with an existing stockholders' equity of more than \$1,000,000 must pay a license fee of not more than \$2,000.]~~ *of not more than \$3,000.*

4. The Commissioner shall adopt regulations establishing the amount of the fees required pursuant to this section. All money collected under the provisions of this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

Sec. 31. NRS 669.200 is hereby amended to read as follows:

669.200 *The Commissioner shall issue an order cancelling a retail trust company's license:*

1. If ~~the~~ proposed *retail* trust company fails to open for business within 6 months after the date the license was issued, or within an additional 6-month extension granted by the Commissioner upon written application and for good cause shown ~~the Commissioner shall issue an order cancelling the trust company's license;~~ or

2. *If the retail trust company fails to maintain regular business hours or otherwise conduct the business of a trust company for more than 30 days.*

Sec. 32. NRS 669.210 is hereby amended to read as follows:

669.210 1. Each ~~licensed~~ *retail* trust company may ~~the~~, *in the conduct of its trust business, within and outside this State, subject to section 8 of this act, as applicable:*

(a) Act as *indenture trustee or as* trustee under any mortgage or bond of any person or of any municipality or body politic.

(b) Accept and execute any municipal or corporate or individual trust not inconsistent with the laws of this State.

(c) Act under the order or appointment of any court as guardian, administrator, receiver or trustee.

(d) Act as executor or trustee under any will.

(e) Act as fiscal or transfer agent of any state, municipality, body politic or corporation, and in such capacity receive and disburse money and register, transfer and countersign certificates of stock, bonds and other evidences of indebtedness.

(f) Act as ~~local or~~ a registered agent of foreign corporations.

(g) Accept and execute any trust business permitted by any law.

(h) Acquire the fiduciary rights, powers, duties and liabilities of a bank, savings and loan association, thrift company, trust company or credit union licensed pursuant to titles 55 and 56 of NRS, and upon the effective date of such an acquisition, the fiduciary rights, powers, duties and liabilities of the bank, savings and loan association, thrift company, trust company or credit union vest in and must be performed by the acquiring trust company.

(i) *Act as an agent, advisory agent, assignee, attorney-in-fact, authenticating agent, bailee, bond or indenture trustee, conversion agent, curator, custodian, escrow agent, exchange agent, fiscal or paying agent, financial adviser, investment adviser, investment manager, managing agent, purchase agent, registrar, safekeeping agent, subscription agent, warrant agent or in similar capacities generally performed by corporate trustees, and in so acting, may possess, purchase, sell, invest, reinvest, safekeep or otherwise manage or administer real or personal property of other persons.*

(j) *Exercise the powers of a business corporation or limited-liability company organized or qualified as a foreign corporation or limited-liability company under Nevada law and any incidental powers that are reasonably necessary to enable it to fully exercise, in accordance with commonly accepted customs and usages, a power conferred in this chapter.*

(k) Do and perform all acts necessary to exercise the powers enumerated in this subsection and authorized by this chapter and any other applicable laws of this State.

2. A *retail* trust company may not engage in any banking business by accepting deposits or making loans.

Sec. 33. NRS 669.220 is hereby amended to read as follows:

669.220 1. A *retail* trust company:

(a) Shall keep all trust funds and investments separate from the assets of the *retail* trust company, and all investments made by the *retail* trust company as a fiduciary must be designated so that the trust or estate to which the investments belong may be clearly identified.

(b) When it holds trust funds awaiting investment or distribution, may deposit or leave those funds on deposit with a state or national bank or credit union. The funds must not be deposited or left with the same corporation depositing them or leaving them on deposit, or with a corporation or association holding or owning a majority of the stock of the *retail* trust company making or leaving the deposit, unless that corporation or association first pledges, as security for the deposit, securities eligible for investment by state banks or credit unions which have a market value equal to that of the deposited funds. No security is required with respect to any portion of the deposits that is insured under the provisions of NRS 678.755 or a law of the United States.

(c) When it acts in any capacity under a court trust or private trust, unless the instrument creating the trust provides otherwise, may cause any securities *or other assets* held by it in its representative capacity to be registered *or titled* in the name of a nominee or nominees of the *retail* trust company.

(d) When acting as depository or custodian for the personal representative of a court trust or private trust, unless the instrument creating the trust provides otherwise, may with the consent of the personal representative of the trust, cause any securities *or other assets* held by it to be registered *or titled* in the name of a nominee or nominees of the *retail* trust company.

2. A trust company is liable for any loss occasioned by the acts of its nominees with respect to securities registered under this section.

3. No corporation or the registrar or transfer agent of the corporation is liable for registering or causing to be registered on the books of the corporation any securities in the name of any nominee of a trust company or for transferring or causing to be transferred on the books of the corporation any securities registered by the corporation in the name of any nominee of a trust company when the transfer is made on the authorization of the nominee.

4. ~~{Except as otherwise provided in subsection 5, the}~~ *The* assets forming the capital of a *retail* trust company must:

(a) Be *cash*, governmental obligations or insured deposits that mature within 3 years after acquisition ~~{ }~~, *readily marketable securities or other liquid, secure assets, bonds, sureties or insurance, or some combination of the foregoing in accordance with NRS 669.100.*

(b) Have an aggregate market value that equals or exceeds ~~{60}~~ *100* percent of the company's ~~{current}~~ *required* stockholders' equity . ~~{or 60 percent of the company's initial stockholders' equity, whichever is greater.}~~

5. A *retail* trust company may purchase or rent ~~{land and equipment for use in the daily}~~ *real or personal property useful for the conduct of the business and other* activities of the *retail* trust company.

6. *A retail trust company may invest its money for its own account, other than those required or permitted to be maintained by subsection 4 or 5 or NRS 669.100, in any type or character of equity securities, debt securities or other asset, provided the investment complies with the prudent investor standards of NRS 164.700 to 164.775, inclusive.*

Sec. 34. NRS 669.225 is hereby amended to read as follows:

669.225 1. In addition to the powers of investment granted to the trust company by the instrument creating the relationship of fiduciary or agent, a trust company which is acting as a fiduciary or agent may, in its discretion or at the direction of another person who is authorized to direct the investment of money

held by the trust company as a fiduciary or agent, invest in the securities of an investment trust or investment company if:

(a) The investment trust or investment company is ~~registered pursuant to~~ *an investment company for the purposes of* the Investment Company Act of 1940, as amended, 15 U.S.C. §§ 80a-1 et seq.; ~~and~~

(b) The portfolio of the investment trust or investment company consists substantially of investments which are not prohibited by the instrument creating the fiduciary or agency relationship ~~}; and~~

(c) The relationship of the investment company to the trust company is disclosed to any person who is currently receiving statements for the account, by a prospectus, a statement of account or otherwise.

2. A *retail* trust company or an affiliate of the *retail* trust company ~~may provide~~ *that provides* services to the investment trust or investment company, including, without limitation, acting as an ~~investment adviser,~~ *adviser*, custodian, transfer agent, registrar, sponsor, distributor or *shareholder serving agent* manager, ~~and~~ may receive reasonable compensation for the services. The manner in which the compensation is calculated must be disclosed to ~~the~~ *any* person who is currently receiving ~~the benefits of the relationship of a fiduciary or agent with the trust company. The disclosure may be made~~ *statements for the account* by a prospectus, a statement of account or otherwise.

3. A *retail* trust company may deposit money held by the *retail* trust company as a fiduciary or agent ~~[with an affiliate before investing or making other disposition of the money]~~ *that is awaiting investment or distribution as provided in the governing instrument for the account in an affiliated bank. To the extent that the money invested in an affiliated bank is not insured by the Federal Deposit Insurance Corporation, the retail trust company shall set aside collateral as security, under the control of appropriate fiduciary officers and employees, with a market value that at all times equals or exceeds the amount of the uninsured fiduciary money.*

4. Notwithstanding subsections 1, 2 and 3, a retail trust company authorized to exercise trust powers in this State which is acting as a fiduciary shall not purchase for the fiduciary estate any fixed income or equity security issued by the retail trust company or an affiliate thereof other than an investment company, unless:

(a) *The retail trust company is expressly authorized to do so by the terms of the instrument creating the trust, a court order, the written consent of the grantor of the trust or the written consent of every adult beneficiary of the trust who, at the time the notice is provided, receives, or is entitled to receive, income under the trust or who would be entitled to receive a distribution of principal if the trust were terminated; or*

(b) *The security is fairly priced and otherwise complies with the prudent investor standards of NRS 164.700 to 164.775, inclusive, and the terms of the instrument, judgment, decree, or other document establishing the fiduciary relationship.*

Sec. 35. NRS 669.295 is hereby amended to read as follows:

669.295 1. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$10,000 *per violation* upon a person who:

~~1-1~~ (a) Without a license, conducts any business or activity for which a license is required pursuant to the provisions of this chapter; or

~~2-1~~ (b) Violates any provision of this chapter or any regulation adopted pursuant thereto.

1 *2. The maximum total fine that the Commissioner may impose on any*
2 *person pursuant to this section with respect to the same or similar actions or*
3 *series of actions which constitute the violations must not exceed the greater of*
4 *\$100,000 or 125 percent of all losses incurred by the retail trust company and its*
5 *clients as the direct or indirect result of such violations.*

6 **Sec. 36.** NRS 669.282 and 669.284 are hereby repealed.

7 **Sec. 37.** (Deleted by amendment.)

TEXT OF REPEALED SECTIONS

669.282 Authority of Commissioner to seize property, business and assets; duties of Commissioner upon seizure.

1. If the Commissioner ascertains by examination or otherwise that the capital or assets of a trust company are impaired or that the affairs of a trust company are in an unsafe condition which may result in danger to the public, he may immediately take possession of all the property, business and assets of the company which are located in this state and retain possession of them pending further proceedings as provided in this chapter.

2. If the directors or officers of a corporation or the managers or members acting in a managerial capacity of a limited-liability company refuse to allow the Commissioner to take possession of the property of the company, the Commissioner shall communicate that fact to the Attorney General. Upon notification from the Commissioner, the Attorney General shall immediately institute such proceedings as may be necessary to place the Commissioner in immediate possession of the property of the company. Upon possession of the property, the Commissioner shall make or have made an inventory of the assets and known liabilities of the company.

3. The Commissioner shall file one copy of the inventory in his office and one copy in the office of the clerk of the district court of the county in which the principal office of the trust company is located and shall mail one copy to each director or officer of the corporation, or the manager or member acting in a managerial capacity of the limited-liability company, at his last known address.

4. The clerk of the court with which the copy of the inventory is filed shall file it as any other case or proceeding pending in the court and shall give it a docket number.

669.284 Persons entitled to remedy conditions leading to seizure; effect of failure to remedy; receivership and liquidation of assets.

1. The directors or officers of a corporation or the managers or members acting in a managerial capacity of a limited-liability company licensed as a trust company may, within 60 days after the date the Commissioner takes possession of the property, business and assets of the corporation or limited-liability company licensed as a trust company, make good any deficit that exists or remedy the unsafe condition of the affairs of the corporation or limited-liability company licensed as a trust company.

2. At the expiration of the 60-day period set forth in subsection 1, if the deficiency in assets or capital has not been made good or the unsafe condition remedied, the Commissioner may apply to the court to be appointed receiver and proceed to liquidate the assets of the company that are located in this state in the same manner as now provided by law for liquidation of a private corporation in receivership.

3. Another person may not be appointed receiver by any court unless he first gives the Commissioner ample notice of his application.

4. The inventory made by the Commissioner pursuant to NRS 669.282 and all claims filed by creditors are open at all reasonable times for inspection, and any action taken by the receiver upon any of the claims is subject to the approval of the court before which the cause is pending.

5. The expenses of the receiver and compensation of counsel, as well as all expenditures required in the liquidation proceedings, must be fixed by the Commissioner subject to the approval of the court and, upon certification of the Commissioner, must be paid out of the money in his hands as the receiver.