

Amendment No. 426

Senate Amendment to Senate Bill No. 365

(BDR 55-395)

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

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 365 (§§ 1, 21, 23, 28, 29).

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/RBL



Date: 4/19/2009

S.B. No. 365—Establishes provisions relating to family trust companies.
(BDR 55-395)



SENATE BILL NO. 365—COMMITTEE ON COMMERCE AND LABOR

MARCH 23, 2009

Referred to Committee on Commerce and Labor

SUMMARY—Establishes provisions relating to family trust companies.
(BDR 55-395)

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

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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 ~~[family]~~ trust companies; providing for the licensure and regulation of family trust companies; revising provisions relating to trust companies; providing a civil penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill sets forth a legislative finding concerning the need for a new chapter in NRS to regulate family trust companies. **Section 1** of this bill provides for assessments to be paid by family trust companies. **Sections 5-11** of this bill set forth definitions relating to family trust companies. **Sections 12 and 37** of this bill provide that a family trust company is exempt from the provisions of chapter 669 of NRS, which regulate trust companies, under certain circumstances. **Sections 13, 14, 21-23 and 26** of this bill provide for the licensure of family trust companies and the renewal of such licenses. Such licensure is optional. **Sections 15-20, 24, 25 and 27-33** of this bill set forth the rights, duties and restrictions applicable to family trust companies and provide for the regulation of family trust companies by the Commissioner of Financial Institutions. **Section 34** of this bill provides for administrative fines to be imposed on persons violating the provisions governing family trust companies.

~~[Section 35 of this bill adds provisions regarding confidential information of trust companies regulated under chapter 669 of NRS.]~~

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

Section 1. NRS 658.098 is hereby amended to read as follows:
658.098 1. On a quarterly or other regular basis, the Commissioner shall collect an assessment pursuant to this section from each:

- (a) Check-cashing service or deferred deposit loan service that is supervised pursuant to chapter 604A of NRS;
- (b) Collection agency that is supervised pursuant to chapter 649 of NRS;
- (c) Bank that is supervised pursuant to chapters 657 to 668, inclusive, of NRS;
- (d) Trust company *or family trust company* that is supervised pursuant to chapter 669 of NRS ~~or~~ *or sections 3 to 34, inclusive, of this act.*

(e) Development corporation that is supervised pursuant to chapter 670 of NRS;

(f) Corporation for economic revitalization and diversification that is supervised pursuant to chapter 670A of NRS;

(g) Person engaged in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits that is supervised pursuant to chapter 671 of NRS;

(h) Savings and loan association that is supervised pursuant to chapter 673 of NRS;

(i) Person engaged in the business of lending that is supervised pursuant to chapter 675 of NRS;

(j) Person engaged in the business of debt adjusting that is supervised pursuant to chapter 676 of NRS;

(k) Thrift company that is supervised pursuant to chapter 677 of NRS; and

(l) Credit union that is supervised pursuant to chapter 678 of NRS.

2. The Commissioner shall determine the total amount of all assessments to be collected from the entities identified in subsection 1, but that amount must not exceed the amount necessary to recover the cost of legal services provided by the Attorney General to the Commissioner and to the Division of Financial Institutions. The total amount of all assessments collected must be reduced by any amounts collected by the Commissioner from an entity for the recovery of the costs of legal services provided by the Attorney General in a specific case.

3. The Commissioner shall collect from each entity identified in subsection 1 an assessment that is based on:

(a) A portion of the total amount of all assessments as determined pursuant to subsection 2, such that the assessment collected from an entity identified in subsection 1 shall bear the same relation to the total amount of all assessments as the total assets of that entity bear to the total of all assets of all entities identified in subsection 1; or

(b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

Sec. 2. Title 55 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 3 to 34, inclusive, of this act.

Sec. 3. *The Legislature finds as facts and determines that:*

1. There exists a need to modernize trust company laws in Nevada to make Nevada more competitive in attracting new business, for Nevada to remain competitive with a majority of other states that have modernized their laws and to ensure the safety and soundness of all trust companies licensed pursuant to the provisions of this chapter or chapter 669 of NRS.

2. Unlike the public trust companies required to be licensed pursuant to the provisions of chapter 669 of NRS, family trust companies do not engage or seek to engage in a trust company business with the public but rather serve solely the interests of members and related parties of a single family and the grantors and beneficiaries of trust instruments created for the purposes of estate planning for the family members. Consequently, there is no public interest to be protected or furthered and requiring the licensing of family trust companies will not promote the public advantage and convenience. There are, however, reasons that some family trust companies may wish to obtain state licensing and appropriate supervision under trust company law.

1 3. *It is the purpose of this chapter to:*

2 (a) *Define those persons who are engaged in or who desire to provide*
3 *fiduciary services to a single family and its related interests as a family trust*
4 *company and who are not doing trust company business with the public or*
5 *offering services to the general public; and*

6 (b) *Bring under public supervision only those family trust companies*
7 *desiring the benefits of being licensed pursuant to the provisions of this chapter*
8 *or chapter 669 of NRS.*

9 Sec. 4. *As used in this chapter, unless the context otherwise requires, the*
10 *words and terms defined in sections 5 to 11, inclusive, of this act have the*
11 *meanings ascribed to them in those sections.*

12 Sec. 5. *“Affiliate” means a family affiliate of any family member of the*
13 *family trust company who is qualified to serve and any person controlling,*
14 *controlled by or under common control with the family trust company.*

15 Sec. 6. *“Confidential information” includes:*

16 1. *The names of stockholders, members or other owners;*

17 2. *Ownership information;*

18 3. *Capital contributions;*

19 4. *Addresses;*

20 5. *Business affiliations;*

21 6. *Information obtained from the family trust company;*

22 7. *Findings of the Commissioner through any examination or investigation;*

23 8. *Any information required to be reported to or filed with the*
24 *Commissioner;*

25 9. *Any information that qualifies as any person’s “nonpublic personal*
26 *information” under 15 U.S.C. § 6809 and the regulations adopted pursuant*
27 *thereto;*

28 10. *Any information or agreement relating to any merger, consolidation or*
29 *transfer;*

30 11. *Any information or agreement relating to any relationship with a*
31 *contracting trustee; and*

32 12. *Any other nonpublic information that, in the judgment of the*
33 *Commissioner, could be useful in connection with an act of bribery, extortion,*
34 *identity theft or terrorism.*

35 Sec. 7. *“Designated relative” means the common ancestor of the family,*
36 *who may be either a living or deceased person. With regard to:*

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

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

44 Sec. 8. *“Family affiliate” means a company or other entity with respect to*
45 *which a family member possesses, directly or indirectly, the power to direct or*
46 *cause the direction of the management and policies of that company or entity,*
47 *whether through the ownership of voting securities, by contract, power of*
48 *direction or otherwise.*

49 Sec. 9. 1. *“Family member” includes, without limitation, the designated*
50 *relative and:*

51 (a) *Any person within the tenth degree of lineal kinship of the designated*
52 *relative;*

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

3 (c) Any nonfamily member who is an individual beneficiary under a will or
4 trust created by a family member specified in paragraph (a) or (b), including the
5 spouse and issue of that person;

6 (d) The spouse and any former spouse of the designated relative or of any
7 person qualifying as a family member pursuant to paragraph (a) or (b);

8 (e) A person who is a relative of a spouse or former spouse specified in
9 paragraph (c) or (d) who is within the fifth degree of lineal kinship of the spouse
10 or former spouse;

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

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

16 (h) An inter vivos or testamentary trust established by a person who is not a
17 family member if noncharitable beneficiaries of that trust include family
18 members;

19 (i) The estate of a family member;

20 (j) The estate of a nonfamily member if the noncharitable beneficiaries of
21 that estate include family members; and

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

27 2. For the purposes of this section:

28 (a) A family member is not a member of the public;

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

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

33 (d) Children of a spouse of a family member must be treated as a natural
34 child of that family member; and

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

38 3. As used in this section:

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

41 (b) "Lineal kinship" means a family member who is in the direct line of
42 ascend or descent from the designated relative.

43 Sec. 10. "Family trust company" means a corporation or limited-liability
44 company that:

45 1. Acts or proposes to act as a fiduciary;

46 2. Is organized or qualified to do business in this State to serve family
47 members; and

48 3. Does not:

49 (a) Transact trust company business with;

50 (b) Propose to act as a fiduciary for; or

51 (c) Solicit trust company business from,

52 ↪ a person who is not a family member.

1 **Sec. 11.** *“Licensed family trust company” means a trust company licensed*
2 *pursuant to this chapter.*

3 **Sec. 12.** *A family trust company is not required to be licensed as a trust*
4 *company pursuant to chapter 669 of NRS. Unless a family trust company applies*
5 *for licensure pursuant to chapter 669 of NRS, the family trust company is not:*

6 1. *Subject to supervision by the Commissioner pursuant to this chapter or*
7 *chapter 669 of NRS; or*

8 2. *Except as otherwise provided in this chapter, subject to the provisions of*
9 *chapter 669 of NRS applicable to a trust company that offers trust company*
10 *services to:*

11 (a) *Persons who are not family members; or*

12 (b) *The public at large.*

13 **Sec. 13.** *A family trust company:*

14 1. *Is not required to be licensed pursuant to this chapter or chapter 669 of*
15 *NRS.*

16 2. *May apply for a license as:*

17 (a) *A trust company pursuant to chapter 669 of NRS; or*

18 (b) *A licensed family trust company pursuant to this chapter.*

19 **Sec. 14.** *A trust company licensed pursuant to the provisions of chapter 669*
20 *of NRS may exchange its license granted pursuant to that chapter for a license*
21 *under this chapter, thereby becoming a licensed family trust company, upon*
22 *providing the Commissioner with satisfactory evidence that at or before the*
23 *effective date of its license under this chapter, the trust company will:*

24 1. *Satisfy the definition of a family trust company; and*

25 2. *Comply with the requirements of section 16 of this act.*

26 **Sec. 15.** *Except as otherwise provided in section 17 of this act, a family*
27 *trust company licensed pursuant to this chapter has all the rights, privileges and*
28 *exemptions from licensing and regulation requirements made applicable by any*
29 *law of this State to trust companies licensed pursuant to chapter 669 of NRS,*
30 *including, without limitation, the requirements for registration, licensing and*
31 *supervision set forth in chapter 90 of NRS.*

32 **Sec. 16.** *A licensed family trust company shall maintain:*

33 1. *At least one officer of the licensed family trust company who is a resident*
34 *of this State;*

35 2. *A physical office in this State where original or true copies of all material*
36 *business records and accounts of the licensed family trust company may be*
37 *accessed and readily available for examination by the Division of Financial*
38 *Institutions;*

39 3. *A registered agent, with an office at the street address of the registered*
40 *agent, in this State;*

41 4. *All applicable state and local business licenses and permits; and*

42 5. *A bank account with a state chartered or national bank having a*
43 *principal or branch offices in this State.*

44 **Sec. 17.** 1. *Except as otherwise provided in subsections 2 and 3, or*
45 *pursuant to the provisions of NRS 669.095, a family trust company formed and*
46 *doing business under the laws of this State or any other state shall not:*

47 (a) *Advertise its services to the public; or*

48 (b) *Use the word “trust” or any direct derivative of that word as a part of its*
49 *name.*

50 2. *The provisions of subsection 1 do not apply to a family trust company*
51 *which is licensed pursuant to chapter 669 of NRS.*

52 3. *The provisions of paragraph (b) of subsection 1 do not apply to a licensed*
53 *family trust company.*

1 **Sec. 18.** *A licensed family trust company must not be organized or operated*
2 *with a stockholders' equity of less than \$300,000. The full amount of the initial*
3 *stockholders' equity must be paid in cash, exclusive of all organization expenses,*
4 *before the licensed family trust company is authorized to commence business as a*
5 *licensed family trust company.*

6 **Sec. 19.** *An applicant for a license to conduct business as a licensed family*
7 *trust company under this chapter must be organized as a corporation or limited-*
8 *liability company under the laws of this State or authorized to do business in this*
9 *State as a foreign corporation or foreign limited-liability company.*

10 **Sec. 20.** 1. *If a licensed family trust company is organized under the laws*
11 *of this State as a corporation or limited-liability company, the articles of*
12 *incorporation, certificate of incorporation or articles of organization must*
13 *contain:*

14 (a) *The name adopted by the licensed family trust company, which must be*
15 *such as to distinguish it from any other trust company formed or incorporated in*
16 *this State, or engaged in the business of a trust company or licensed family trust*
17 *company in this State; and*

18 (b) *The purpose for which it is formed.*

19 2. *The provisions of subsection 1 do not apply to a licensed family trust*
20 *company which is licensed or chartered to do business as a trust company under*
21 *the laws of another state, but the licensed family trust company must use a name*
22 *that distinguishes it from any other trust company organized as or conducting the*
23 *business of:*

24 (a) *A trust company; or*

25 (b) *A licensed family trust company,*
26 *↪ in this State.*

27 **Sec. 21.** 1. *An applicant for a license as a family trust company must file*
28 *an application with the Commissioner on forms prescribed by the Commissioner.*
29 *The application must contain or be accompanied by such information as the*
30 *Commissioner requires.*

31 2. *A nonrefundable fee of not more than \$3,000 must accompany the*
32 *application. The applicant must also pay such reasonable additional expenses*
33 *incurred in the process of investigation as the Commissioner deems necessary. In*
34 *addition, a fee of not less than \$300 or more than \$1,000, prorated on the basis of*
35 *the licensing year as provided by the Commissioner, must be paid at the time of*
36 *making the application.*

37 3. *A licensed family trust company may maintain offices in this and other*
38 *states. For every branch location of a family trust company organized under the*
39 *laws of this State, and every branch location in this State of a foreign family trust*
40 *company electing to be licensed as a family trust company in this State, a request*
41 *for approval and licensing must be filed with the Commissioner on such forms as*
42 *he prescribes. A nonrefundable fee of not more than \$500 must accompany each*
43 *request. In addition, a fee of not more than \$200, prorated on the basis of the*
44 *licensing year as provided by the Commissioner, must be paid at the time of*
45 *making the request.*

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

50 5. *The Commissioner shall consider an application to be withdrawn if the*
51 *Commissioner has not received all information and fees required to complete the*
52 *application within 12 months of the Commissioner's first request therefor or*
53 *within such later period as the Commissioner determines. If an application is*

1 *deemed to be withdrawn pursuant to this subsection or if an applicant otherwise*
2 *withdraws an application, the Commissioner must not issue a license to the*
3 *applicant unless the applicant submits a new application and pays any required*
4 *fees.*

5 **Sec. 22. 1.** *Within 60 days after the application for a license as a family*
6 *trust company is filed, the Commissioner shall investigate the facts of the*
7 *application and the other requirements of this chapter to determine:*

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

11 *(1) Have a good reputation for honesty, trustworthiness and integrity and*
12 *display competence to transact the business of a licensed family trust company.*
13 *The applicant must submit satisfactory proof of these qualifications to the*
14 *Commissioner.*

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

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

18 *(4) Have not had a license that was issued pursuant to the provisions of*
19 *this chapter or chapter 669 of NRS suspended or revoked within the 10 years*
20 *immediately preceding the date of the application.*

21 *(5) Have not had a license as a trust company which was issued in any*
22 *other state, district or territory of the United States or any foreign country*
23 *suspended or revoked within the 10 years immediately preceding the date of the*
24 *application.*

25 *(6) Have not been found guilty of any violation of any of the provisions*
26 *of this chapter or any regulation adopted pursuant thereto that in the judgment of*
27 *the Commissioner would render the person unfit for the proposed position.*

28 *(b) That the financial status of the directors and officers of the corporation,*
29 *or the managers or members acting in a managerial capacity of the limited-*
30 *liability company, as applicable, is consistent with their responsibilities and*
31 *duties.*

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

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

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

43 **3.** *If the hearing officer affirms the order of the Commissioner refusing the*
44 *license, the applicant may file a petition for judicial review pursuant to*
45 *NRS 233B.130.*

46 **Sec. 23. 1.** *On or before April 1 of each year, each licensed family trust*
47 *company must pay to the Division of Financial Institutions a license fee of*
48 *\$1,500. All money collected under the provisions of this section must be deposited*
49 *in the State Treasury pursuant to the provisions of NRS 658.091.*

50 **2.** *A licensed family trust company which identifies a new designated*
51 *relative when the licensed family trust company renews its license shall pay an*
52 *additional annual license fee for renewal in such amount as the Commissioner*
53 *shall determine.*

1 **Sec. 24. 1. A family trust company may, but only for family members:**

2 (a) Act as a fiduciary, including as a personal representative, within and
3 outside this State.

4 (b) Act within and outside this State as advisory agent, agent, assignee,
5 assignee for the benefit of creditors, attorney-in-fact, authenticating agent,
6 bailee, bond or indenture trustee, conservator, conversion agent, curator,
7 custodian, escrow agent, exchange agent, fiscal or paying agent, financial
8 advisor, investment advisor, investment manager, managing agent, purchase
9 agent, receiver, registrar, safekeeping agent, subscription agent, transfer agent
10 except for public companies, warrant agent, or in similar capacities generally
11 performed by corporate trustees, and in so acting to possess, purchase, sell,
12 invest, reinvest, safekeep or otherwise manage or administer real or personal
13 property of other persons.

14 (c) Exercise the powers of a business corporation or a limited-liability
15 company organized or qualified as a foreign corporation or a limited-liability
16 company under the laws of this State and any incidental powers that are
17 reasonably necessary to enable it to fully exercise, in accordance with commonly
18 accepted customs and usages, a power conferred in this chapter.

19 (d) Do and perform all acts necessary or incidental to exercise the powers
20 enumerated in this section or authorized by this chapter and any other applicable
21 laws of this State.

22 2. A family trust company shall not engage in any:

23 (a) Banking with the public; or

24 (b) Trust company business with the public unless licensed pursuant to
25 chapter 669 of NRS.

26 **Sec. 25. 1. Except as otherwise provided in subsection 2, the assets**
27 **forming the minimum capital of a licensed family trust company pursuant to**
28 **section 18 of this act must:**

29 (a) ~~[Be federal, state or municipal governmental]~~ Consist of:

30 (1) Cash;

31 (2) Governmental obligations or insured deposits that mature within 3
32 years after acquisition ~~for~~;

33 (3) Readily marketable securities or other liquid, secure assets, bonds,
34 sureties or insurance; or

35 (4) Any combination thereof.

36 (b) Have an aggregate market value that equals or exceeds ~~[60]~~ 100 percent
37 of the company's ~~[current]~~ required stockholders' equity ~~[for 60 percent of the~~
38 ~~company's initial stockholders' equity, whichever is greater.]~~

39 2. A licensed family trust company may purchase or rent real or personal
40 property for use in the conduct of the business and other activities of the
41 company.

42 3. Notwithstanding any other provisions of law to the contrary, a licensed
43 family trust company may invest its funds for its own account, other than those
44 required or permitted to be maintained by subsection 1 or 2, in any type or
45 character of equity securities, debt securities or other asset provided the
46 investment complies with the prudent investor standards set forth in NRS 164.700
47 to 164.775, inclusive.

48 4. Notwithstanding the provisions of any other law to the contrary, a family
49 trust company is authorized while acting as a fiduciary to purchase for the
50 fiduciary estate, directly from underwriters or distributors or in the secondary
51 market:

52 (a) Bonds or other securities underwritten or distributed by the family trust
53 company or an affiliate thereof or by a syndicate which includes the family trust

1 *company, provided that the family trust company discloses in any written*
2 *communication or account statement reflecting the purchase of those bonds or*
3 *securities the nature of the interest of the family trust company in the*
4 *underwriting or distribution of those bonds and securities and whether the family*
5 *trust company received any fee in connection with the purchase; and*

6 *(b) Securities of any investment company as defined under the Investment*
7 *Company Act of 1940 for which the family trust company acts as advisor,*
8 *custodian, distributor, manager, registrar, shareholder servicing agent, sponsor*
9 *or transfer agent, or provided the family trust company discloses in any written*
10 *communication or account statement reflecting the purchase of the securities the*
11 *nature of the relationship and whether the family trust company received any fee*
12 *for providing those services.*

13 *5. The authority granted in subsection 4 may be exercised only if:*

14 *(a) The investment is not expressly prohibited by the instrument, judgment,*
15 *decree or order establishing the fiduciary relationship;*

16 *(b) The family trust company discloses in writing to the person or persons to*
17 *whom it sends account statements its intent to exercise the authority granted in*
18 *subsection 4 before the first exercise of that authority; and*

19 *(c) The family trust company procures in writing the consent of its*
20 *cofiduciaries with discretionary investment powers, if any, to the investment.*

21 *6. A family trust company may:*

22 *(a) Invest in the securities of an investment company as defined under the*
23 *federal Investment Company Act of 1940 or investment trust, to which the family*
24 *trust company or its affiliate provides services in a capacity other than as trustee.*
25 *The investment is not presumed to be affected by a conflict between personal and*
26 *fiduciary interests if the investment complies with the prudent investor standards*
27 *set forth in NRS 164.700 to 164.775, inclusive.*

28 *(b) Be compensated by an investment company or investment trust described*
29 *in paragraph (a) for providing services in a capacity other than as trustee if the*
30 *family trust company discloses at least annually to each person to whom it sends*
31 *account statements the rate and method by which the compensation was*
32 *determined.*

33 *7. Nothing in subsections 4, 5 and 6 shall affect the degree of prudence*
34 *which is required of fiduciaries under the laws of this State. Any bonds or*
35 *securities purchased under authority of this section are not presumed to be*
36 *affected by a conflict between the fiduciary's personal and fiduciary interest if the*
37 *purchase of the bonds or securities:*

38 *(a) Is at a fair price;*

39 *(b) Is in accordance with:*

40 *(1) The interest of the beneficiaries; and*

41 *(2) The purposes of the trusts; and*

42 *(c) Complies with:*

43 *(1) The prudent investor standards set forth in NRS 164.700 to 164.775,*
44 *inclusive; and*

45 *(2) The terms of the instrument, judgment, decree or order establishing*
46 *the fiduciary relationship.*

47 *8. Notwithstanding the provisions of subsections 4 to 7, inclusive, a family*
48 *trust company which is authorized to exercise trust powers in this State and*
49 *which is acting as a fiduciary shall not purchase for the fiduciary estate any fixed*
50 *income or equity security issued by the family trust company or an affiliate*
51 *thereof unless:*

52 *(a) The family trust company is expressly authorized to do so by:*

53 *(1) The terms of the instrument creating the trust;*

(2) *A court order;*
(3) *The written consent of the grantor of the trust; or*
(4) *The written consent of every adult beneficiary of the trust who, at the time notice is provided pursuant to paragraph (b) of subsection 5, 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 purchase of the security:*

(1) *Is at a fair price; and*

(2) *Complies with:*

(I) *The prudent investor standards set forth in NRS 164.700 to 164.775, inclusive; and*

(II) *The terms of the instrument, judgment, decree or order establishing the fiduciary relationship.*

Sec. 26. *Whenever a licensed family trust company desires to discontinue its business as a family trust company, it shall furnish to the Commissioner satisfactory evidence of its release and discharge from all the obligations and trusts which it has assumed or which have been imposed by law. Thereafter, the Commissioner shall enter an order cancelling the license of the family trust company.*

Sec. 27. 1. *The directors or managers of a licensed family trust company shall obtain fidelity bonds in such amounts as they shall determine on any active officers, managers, members acting in a managerial capacity and employees, whether or not they receive a salary or other compensation from the licensed family trust company, to indemnify the licensed family trust company against loss because of any dishonest, fraudulent or criminal act or omission by any of the persons bonded, acting alone or in combination with any other person. The bonds may be in any form and may be paid for by the licensed family trust company.*

2. *A licensed family trust company may also procure property and casualty insurance of a nature and with such coverage amounts as the licensed family trust company deems advisable.*

Sec. 28. 1. *The Commissioner may examine the books and records of a licensed family trust company. For each examination of the books and records of a licensed family trust company as authorized under this chapter, the Commissioner shall charge and collect from the licensed family trust company a fee for conducting the examination and in preparing, typing and copying the report of the examination at the rate established pursuant to NRS 658.101.*

2. *All money collected under this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.*

Sec. 29. 1. *The Commissioner may adopt such regulations as may be necessary to carry out the purposes and provisions of this chapter.*

2. *The Commissioner may issue rules, orders, approvals, declaratory rulings or interpretations which determine, in individual circumstances or circumstances of more general applicability, whether an existing or proposed family trust company meets, or family trust companies within such circumstances of more general applicability would meet, the definition of a family trust company. Any person applying for such a determination shall pay an application fee to the Division of Financial Institutions upon submittal of that application for a determination in such amount as the Commissioner shall prescribe.*

Sec. 30. 1. *The violation of any of the provisions of this chapter by the officers or directors, or the managers or members acting in a managerial capacity, of any licensed family trust company is sufficient cause for the Commissioner to revoke the license of the family trust company.*

2. If a licensed family trust company or any person authorized to act on behalf of the family trust company refuses to allow the Commissioner or his deputies to inspect all books, records, papers and effects of the business of the family trust company, the Commissioner may revoke the license of the licensed family trust company.

Sec. 31. 1. If a licensed family trust company fails to submit within the prescribed period any report required pursuant to this chapter or any regulation adopted pursuant thereto, the Commissioner may impose and collect a fee of not more than \$25 for each day the report is overdue.

2. The Commissioner shall adopt regulations establishing the amount of the fee that may be imposed pursuant to this section.

Sec. 32. Each officer, director, manager, member, employee or agent of a licensed family trust company who, following written notice from the Commissioner sent by certified mail, knowingly or willfully:

1. Neglects to perform any duty required by this chapter or other applicable law; or

2. Fails to conform to any material lawful requirement made by the Commissioner,

is subject to removal upon order of the Commissioner.

Sec. 33. 1. ~~Unless, in the judgment of the Commissioner, the ends of justice and the public advantage will be served by the publication of the information, all confidential information received in connection with any petition, application or other matter concerning a family trust company or otherwise submitted to the Division of Financial Institutions or the Commissioner by or on behalf of a family trust company:~~

~~(a) Shall be deemed to be confidential; and~~

~~(b) Is not;~~

~~(1) Subject to subpoena in a civil action; or~~

~~(2) Made public.~~ Except as otherwise provided in this section, any application and personal or financial records submitted by a person pursuant to the provisions of this chapter, any personal or financial records or other documents obtained by the Division of Financial Institutions pursuant to an examination or audit conducted by the Division pursuant to this chapter and any other private information relating to a family trust company are confidential and may be disclosed only to:

(a) The Division, any authorized employee of the Division and a state or federal agency investigating activities regulated pursuant to this chapter; and

(b) Any other person if the Commissioner, in his discretion, determines that the interests of the public in disclosing the information outweigh the interests of the person about whom the information pertains in not disclosing the information.

2. The Commissioner shall give to the family trust company to which the information relates 10-days prior written notice of intent to disclose confidential information directly or indirectly to ~~the public.~~ a person pursuant to paragraph (b) of subsection 1. Any family trust company which receives such a notice may object to the disclosure of the confidential information and will be afforded the right to a hearing in accordance with the provisions of chapter 233B of NRS. If a family trust company requests a hearing, the Commissioner may not reveal confidential information prior to the conclusion of the hearing and a ruling. Prior to dissemination of any confidential information, the Commissioner shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event shall the Commissioner

disclose confidential information to the general public, any competitor or any potential competitor of a family trust company.

3. Nothing in this chapter is intended to preclude a law enforcement officer from gaining access to otherwise confidential records by subpoena, court order, search warrant or other lawful means. Notwithstanding any other provision of this chapter, the Commissioner shall have the ability to share information with other out of state or federal regulators with whom the Department of Business and Industry has an agreement regarding the sharing of information. Nothing in this chapter is intended to preclude any agency of this State from gaining access to otherwise confidential records in accordance with any applicable law.

Sec. 34. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than \$10,000 upon a person who:

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

2. Violates any provision of this chapter or any regulation adopted pursuant thereto.

Sec. 35. ~~[Chapter 669 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. Unless, in the judgment of the Commissioner, the ends of justice and the public advantage will be served by the disclosure of the information, the Commissioner may, at his discretion on request or otherwise, determine that confidential information received in connection with any petition or application of or concerning a trust company, other than a family trust company, should not be publicly available, in which case that information:~~

~~(a) Shall be deemed to be confidential; and~~

~~(b) Is not;~~

~~(1) Subject to subpoena in a civil action; or~~

~~(2) Made public;~~

~~2. As used in this section, "confidential information" has the meaning ascribed to it in section 6 of this act.] (Deleted by amendment.)~~

Sec. 36. NRS 669.020 is hereby amended to read as follows:

669.020 As used in this chapter ~~§~~ and sections 3 to 34, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 669.029 to 669.070, inclusive, have the meanings ascribed to them in those sections.

Sec. 37. NRS 669.080 is hereby amended to read as follows:

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

(a) Does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies, but if the business conducted in this State is not subject to supervision by a regulatory authority of another jurisdiction, the person must be licensed pursuant to this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

11 (n) Acts as a fiduciary if:

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

13 (2) He serves as a fiduciary for a relative by blood or marriage ~~to~~; *or*

14 *(o) Except as otherwise provided in sections 3 to 34, inclusive, of this act, is a*
15 *family trust company, as defined in section 10 of this act.*

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