

SENATE BILL NO. 136—SENATOR RHOADS (BY REQUEST)

FEBRUARY 8, 2011

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises certain provisions governing financial institutions. (BDR 55-737)

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 financial institutions; revising provisions governing the period that a bank may hold certain real property; removing provisions requiring a bank annually to charge off a certain percentage of the value of certain real property held by the bank and acquired as a result of a debt owed to the bank; revising provisions governing the review of certain applications for licensure by the Commissioner of Financial Institutions; revising provisions relating to the control of a retail trust company; revising provisions governing the assets which certain trust companies are required to maintain; revising provisions governing applications for a license to operate a retail trust company; authorizing certain persons to appeal certain decisions of the Commissioner; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a bank to hold real property that the bank acquires through the collection of debts owed to it for up to 10 years, and **section 1** of this bill reduces that period to 5 years, except that a bank may request an extension of that period from the Commissioner of Financial Institutions of not more than 5 years. Existing law also requires a bank to charge off the real property on a schedule of not less than 10 percent per year, or at a greater percentage if so required by the Commissioner. (NRS 662.015) **Section 1** removes the requirement that a bank annually charge off a certain percentage of the value of such real property.

Existing law charges the Commissioner with certain duties and responsibilities related to retail trust companies, including investigating companies that apply for licensure as a retail trust company, issuing licenses to qualified companies to



operate as a retail trust company and removing from office an officer, director, manager or employee of a retail trust company for certain conduct. (NRS 657.180, 669.085, 669.090, 669.130, 669.150, 669.160, 669.281) **Section 3** of this bill requires the Commissioner to consider certain criteria related to the potential long-term success of a trust company before approving the company's application for licensure to operate as a retail trust company. **Section 4** of this bill requires a person who intends to obtain control of a retail trust company to submit an application for licensure to the Commissioner. **Section 7** of this bill requires the Commissioner to provide to an applicant for licensure as a retail trust company written notice of any grounds for denial of an application and authorizes the applicant to cure any defect or deficiency in the application and resubmit the application within a certain period. **Section 8** of this bill provides that a person who is removed from office by the Commissioner may appeal his or her removal from office within a certain period.

Existing law requires a retail trust company to maintain at least 50 percent of its required stockholders' equity in cash, unless the Commissioner approves a different amount, with the remaining amount to be held in the form of readily marketable securities or certain other assets that may be approved by the Commissioner. Existing law also requires a noncustodial trust company to maintain 50 percent of its required minimum capital in cash. (NRS 669.100) **Section 6** of this bill requires a retail trust company to maintain a certain amount of its required stockholders' equity in the form of cash or certain cash equivalents and authorizes a retail trust company to hold the remaining amount of the required stockholders' equity in the form of readily marketable securities or certain other assets upon the approval of the Commissioner. **Section 6** further requires that bonds or other evidence of indebtedness held by a retail trust company as part of its required stockholders' equity meet certain investment standards. **Section 6** also requires a noncustodial trust company to maintain 25 percent of its required minimum capital in the form of cash.

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

Section 1. NRS 662.015 is hereby amended to read as follows:
662.015 1. In addition to the powers conferred by law upon private corporations and limited-liability companies, a bank may:

(a) Exercise by its board of directors, managers or authorized officers and agents, subject to law, all powers necessary to carry on the business of banking by:

(1) Discounting and negotiating promissory notes, drafts, bills of exchange and other evidences of indebtedness;

(2) Receiving deposits;

(3) Buying and selling exchange, coin and bullion; and

(4) Loaning money on personal security or real and personal property.

At the time of making loans, banks may take and receive interest or discounts in advance.

(b) Adopt regulations for its own government not inconsistent with the Constitution and laws of this State.



(c) Issue, advise and confirm letters of credit authorizing the beneficiaries to draw upon the bank or its correspondents.

(d) Receive money for transmission.

(e) Establish and become a member of a clearinghouse association and pledge assets required for its qualification.

(f) Exercise any authority and perform all acts that a national bank may exercise or perform, with the consent and written approval of the Commissioner. The Commissioner may, by regulation, waive or modify a requirement of Nevada law if the corresponding requirement for national banks is eliminated or modified.

(g) Provide for the performance of the services of a bank service corporation, such as data processing and bookkeeping, subject to any regulations adopted by the Commissioner.

(h) Unless otherwise specifically prohibited by federal law, sell annuities if licensed by the Commissioner of Insurance.

2. A bank may purchase, hold and convey real property:

(a) As is necessary for the convenient transaction of its business, including furniture and fixtures, with its banking offices and for future site expansion. This investment must not exceed, except as otherwise provided in this section, 60 percent of its stockholders' or members' equity, plus subordinated capital notes and debentures. The Commissioner may authorize any bank located in a city whose population is more than 10,000 to invest more than 60 percent of its stockholders' or members' equity, plus subordinated capital notes and debentures, in its banking offices, furniture and fixtures.

(b) As is mortgaged to it in good faith by way of security for loans made or money due to the bank.

(c) As is permitted by NRS 662.103.

3. This section does not prohibit any bank from holding, developing or disposing of any real property it may acquire through the collection of debts due it. ~~{Any}~~ *Except as otherwise provided in subsection 4*, real property acquired through the collection of debts due it may not be held for longer than ~~{10}~~ 5 years. It must be sold at private or public sale within 30 days thereafter. ~~{During the time that the bank holds the real property, the bank shall charge off the real property on a schedule of not less than 10 percent per year, or at a greater percentage per year as the Commissioner may require.}~~

4. A bank may request and the Commissioner may grant an extension of the period described in subsection 3 of not more than 5 years. The Commissioner shall not grant a bank more than one extension of the period prescribed in subsection 3 for any real property held by the bank.



Sec. 2. NRS 669.083 is hereby amended to read as follows:

669.083 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:

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

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

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

(d) Maintenance of *any cash as a portion of* the required ~~least portion of the~~ stockholders' equity pursuant to NRS 669.100 in accounts with one or more banks or other financial institutions located in this State;

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

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

Sec. 3. NRS 669.085 is hereby amended to read as follows:

669.085 1. ~~{The Commissioner may conduct a pre-opening examination of a retail trust company and, in}~~ *In* rendering a decision on an application for a license as a retail trust company, *the Commissioner shall* consider:

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

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

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

~~—(d)}~~ Whether the proposed officers and directors or managers of the proposed retail trust company, as a group, have sufficient experience, ability, standing and competence and whether each individually has sufficient trustworthiness and integrity to justify a belief that the proposed retail trust company will be free from



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1 improper or unlawful influence and otherwise will operate in
2 compliance with the law and applicable fiduciary duties and that
3 success of the proposed retail trust company is reasonably probable;

4 ~~[(e)]~~ (d) Whether any investment services to trusts, estates,
5 charities, employee benefit plans and other fiduciary accounts or to
6 natural persons, partnerships, limited-liability companies and other
7 entities, including, without limitation, providing investment advice
8 with or without discretion or selling investments in or investment
9 products of affiliated or nonaffiliated persons, will be conducted in
10 compliance with all applicable fiduciary standards, including,
11 without limitation, NRS 164.700 to 164.775, inclusive, the duty of
12 loyalty and disclosure of material information;

13 ~~[(f)]~~ (e) Whether the proposed retail trust company will be
14 exempt from registration under the Investment Advisers Act of
15 1940, 15 U.S.C. § 80b-1 et seq., and any similar state laws in each
16 state where it would otherwise be required to register and, if not,
17 whether it will comply with such registration requirements before
18 commencing business and thereafter will comply with all federal
19 and state laws and regulations applicable to it, its employees and
20 representatives as a registrant under such laws;

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

25 ~~[(h)]~~ (g) Any other factors that the Commissioner may
26 **reasonably** require.

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

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

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

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

43 (d) The type of fiduciary assets proposed to be held and any
44 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. 4. NRS 669.087 is hereby amended to read as follows:

669.087 1. A license issued pursuant to this chapter is not transferable or assignable ~~[. Upon]~~ , *but 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 NRS 669.085.

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



4. A person who ~~acquires~~ *intends to acquire* control ~~as a result of a change of control~~ of a retail trust company shall submit an application to the Commissioner. The application must be submitted on a form prescribed by the Commissioner. The Commissioner shall conduct an investigation *pursuant to NRS 669.160* to determine whether the person has a good reputation for honesty, trustworthiness and integrity and is competent to ~~transact the business of a~~ *control the* trust company in a manner which protects the interests of the general public.

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

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

Sec. 5. NRS 669.092 is hereby amended to read as follows:

669.092 1. It is unlawful for any retail trust company licensed in this State to engage in trust company business at any office outside this State without the prior approval of the Commissioner.

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

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

(b) ~~Meet~~ *Provide proof satisfactory to the Commissioner that the retail trust company has met* all the requirements to do business as a trust company at an office in that state ~~and, including, without limitation, written documentation from the appropriate state agency that the retail trust company is authorized to do business in that state.~~

Sec. 6. 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 \$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~~ *25* percent of its required stockholders' equity in cash ~~unless the Commissioner approves a smaller amount.~~ *and at least an additional 25 percent of its required stockholders' equity in cash or cash equivalents comprising certificates of deposit, money*



1 *market funds or other insured deposits. Cash equivalents held by a*
2 *retail trust company pursuant to this subsection may, upon prior*
3 *approval by the Commissioner, comprise investments in treasury*
4 *bills, government obligations or commercial paper which, if*
5 *acquired after October 1, 2011, must mature not later than 3*
6 *months after the date of acquisition by the retail trust company.*
7 *Any certificate of deposit, money market fund, insured deposit,*
8 *commercial paper, treasury bill or government obligation, other*
9 *than an obligation of the United States or an obligation*
10 *guaranteed by the United States, that is held as a cash equivalent*
11 *by a retail trust company pursuant to this subsection must not*
12 *exceed 10 percent of the total required stockholders' equity at the*
13 *time the cash equivalent is purchased. The remaining ~~50 percent~~*
14 *amount of ~~its~~ the retail trust company's required stockholders'*
15 *equity may be a different form of readily marketable securities , or*
16 *with prior approval by the Commissioner , other liquid, secure asset,*
17 *bond, surety or insurance, or some combination of the foregoing.*
18 *Any bond or other evidence of indebtedness held by a retail trust*
19 *company pursuant to this subsection must have an investment*
20 *grade credit rating and must have received a rating within one of*
21 *the top three rating categories of Moody's Investors Service, Inc.*
22 *or Standard and Poor's Ratings Services.*

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

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

- 28 (1) By October 1, 2010, \$500,000;
29 (2) By October 1, 2011, \$750,000; and
30 (3) By October 1, 2012, \$1,000,000; and

31 (b) Maintain ~~\$500,000~~ **25 percent** of such minimum capital in
32 cash on and after October 1, 2010.

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

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

- 38 (1) By October 1, 2010, \$350,000;
39 (2) By October 1, 2011, \$400,000; and
40 (3) By October 1, 2012, \$500,000; and

41 (b) Maintain ~~50~~ **25** percent of such minimum capital in cash on
42 and after October 1, 2010.

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



Sec. 7. NRS 669.160 is hereby amended to read as follows:

669.160 1. Within 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 issued pursuant to the provisions of this chapter that was suspended or revoked within the 10 years immediately preceding the date of the application, 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, 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 NRS 669.083.



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2. ~~[Notice]~~ After an investigation by the Commissioner pursuant to subsection 1, if the Commissioner finds any defect or deficiency in an application for licensure which would constitute grounds for denial of the application, written notice of such grounds for denial must be served personally or sent by certified mail to the applicant. The Commissioner shall allow the applicant an opportunity to cure any defect or deficiency in the application and, not later than 30 days after receipt of the notice of denial, to resubmit the application for approval.

3. If a defect or deficiency in an application is not cured pursuant to subsection 2, written 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 to the company affected. The company, upon application, is entitled to a hearing before 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.]~~ 4. The order of the Commissioner is final for the purposes of judicial review.

Sec. 8. NRS 669.281 is hereby amended to read as follows:

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

2. An officer, director, manager or employee of a retail trust company who is removed from office pursuant to subsection 1 may appeal his or her removal by filing a written request for a hearing with the Commissioner within 10 days after the effective date of his or her removal. The Commissioner shall conduct the hearing after providing at least 5 days' written notice to the retail trust company and the officer, director, manager or employee who is removed from office. Within 5 days after the hearing, the Commissioner shall enter an order affirming or disaffirming the removal of the person from office. An order of the Commissioner entered pursuant to this subsection is final for the purposes of judicial review.

Sec. 9. This act becomes effective upon passage and approval.

