

Amendment No. 1059

Senate Amendment to Senate Bill No. 123	(BDR 52-634)
Proposed by: Senate Committee on Commerce, Labor and Energy	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

MNM/BAW



Date: 6/1/2015

S.B. No. 123—Revises provisions governing certain loans. (BDR 52-634)



SENATE BILL NO. 123—COMMITTEE ON
COMMERCE, LABOR AND ENERGY

FEBRUARY 5, 2015

Referred to Committee on Commerce, Labor and Energy

SUMMARY—~~[Revises provisions governing certain loans. (BDR 52-634)]~~
Authorizes certain foreign trust companies to request to engage in the solicitation of trust company business in this State. (BDR 55-634)

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 ~~loans; revising provisions governing certain deferred deposit loans and high interest loans;~~ foreign trust companies; authorizing a foreign trust company to submit a written request to the Commissioner of Financial Institutions to engage in the solicitation of trust company business in this State; prohibiting such a foreign trust company from acting as trustee of a spendthrift trust; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law establishes certain requirements that are applicable to a person who has been issued a license to operate a check-cashing service, deferred deposit loan service, high interest loan service or title loan service and who makes a new deferred deposit or high interest loan to a customer to pay the balance of an outstanding loan. Existing law also provides an exemption from those requirements if the licensee, in making the new deferred deposit or high interest loan, complies with certain conditions, one of which is that the licensee does not commence any civil action or process of alternative dispute resolution (ADR) on a defaulted loan or any extension or repayment plan thereof. (NRS 604A.480) This bill removes that condition, allowing such a licensee to make a new deferred deposit or high interest loan without including in the agreement therefor a provision which sets forth that the licensee will not commence a civil action or ADR.~~

Existing law provides that it is unlawful for any retail trust company to engage in the business of a trust company without complying with the provisions of existing law governing trust companies and having a license issued by the Commissioner of Financial Institutions. (NRS 669.090) Section 1.2 of this bill authorizes a foreign trust company licensed under the laws of another state which seeks to engage only in the solicitation of trust company business in this State to submit a written request for authorization to solicit trust company business to the Commissioner. The written request must be accompanied by a nonrefundable fee of \$500 and certain other information concerning the foreign trust company. Section 1.2 also requires a foreign trust company whose

written request is approved to renew the request annually and pay a nonrefundable renewal fee of \$250.

Section 1.2 additionally provides that a foreign trust company whose written request for authorization to solicit trust company business is approved by the Commissioner is authorized to solicit trust company business in this State and to contact existing or prospective customers, but is prohibited from: (1) accepting fiduciary appointments; (2) executing documents that create a fiduciary relationship; (3) making decisions regarding the investment or distribution of fiduciary assets; or (4) otherwise engaging in any activity as a trust company for which a license is required.

Existing law also: (1) authorizes the Commissioner to impose an administrative fine of not more than \$10,000 per violation upon a person who violates any provision of existing law governing trust companies or any regulation adopted pursuant thereto; and (2) generally provides that any person violating any such provision of existing law is guilty of a gross misdemeanor. (NRS 669.295, 669.300) A person who violates section 1.2 is therefore subject to such penalties.

Section 1.8 of this bill specifies that a foreign trust company which is only authorized to solicit trust company business in this State pursuant to section 1.2 cannot qualify as a trustee of a spendthrift trust in this State.

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

Section 1. ~~[NRS 604A.480 is hereby amended to read as follows:~~

~~604A.480 1. Except as otherwise provided in subsection 2, if a customer agrees in writing to establish or extend the period for the repayment, renewal, refinancing or consolidation of an outstanding loan by using the proceeds of a new deferred deposit loan or high interest loan to pay the balance of the outstanding loan, the licensee shall not establish or extend the period beyond 60 days after the expiration of the initial loan period. The licensee shall not add any unpaid interest or other charges accrued during the original term of the outstanding loan or any extension of the outstanding loan to the principal amount of the new deferred deposit loan or high interest loan.~~

~~2. [This section does] The requirements of subsection 1 do not apply to a new deferred deposit loan or high interest loan if the licensee:~~

~~(a) Makes the new deferred deposit loan or high interest loan to a customer pursuant to a loan agreement which, under its original terms:~~

~~(1) Charges an annual percentage rate of less than 200 percent;~~

~~(2) Requires the customer to make a payment on the loan at least once every 30 days;~~

~~(3) Requires the loan to be paid in full in not less than 150 days; and~~

~~(4) Provides that interest does not accrue on the loan at the annual percentage rate set forth in the loan agreement after the date of maturity of the loan;~~

~~(b) Performs a credit check of the customer with a major consumer reporting agency before making the loan;~~

~~(c) Reports information relating to the loan experience of the customer to a major consumer reporting agency;~~

~~(d) Gives the customer the right to rescind the new deferred deposit loan or high interest loan within 5 days after the loan is made without charging the customer any fee for rescinding the loan; and~~

~~(e) Participates in good faith with a counseling agency that is:~~

~~(1) Accredited by the Council on Accreditation of Services for Families and Children, Inc., or its successor organization; and~~

~~(2) A member of the National Foundation for Credit Counseling, or its successor organization.]; and~~

~~(f) Does not commence any civil action or process of alternative dispute resolution on a defaulted loan or any extension or repayment plan thereof.]]~~
(Deleted by amendment.)

Sec. 1.2. Chapter 669 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a foreign trust company seeks to engage only in the solicitation of trust company business in this State, regardless of whether the foreign trust company has a physical location in this State, the foreign trust company shall submit a written request for authorization to solicit trust company business to the Commissioner. The written request must be accompanied by:

(a) A nonrefundable fee of \$500.

(b) Evidence that the foreign trust company is qualified to do business as a foreign corporation or foreign limited-liability company pursuant to chapter 80 or 86 of NRS, as applicable.

(c) The designation of a registered agent who resides or is located in this State to receive service of legal process relating to activities conducted by the foreign trust company in this State.

(d) If the foreign trust company wishes to have a trust representative office in this State:

(1) The address of the trust representative office;

(2) The names of all persons who will be representing the foreign trust company at the trust representative office; and

(3) Evidence of compliance with all applicable requirements for state and local business licenses.

(e) Confirmation that the foreign trust company is authorized to conduct business as a trust company in its home state.

(f) Confirmation by the proper regulatory authority in the home state of the foreign trust company that the license or charter of the foreign trust company is in good standing.

(g) Evidence that the foreign trust company has pledged \$100,000 in cash or securities with the Division of Financial Institutions, issued or backed by the Federal Government, or has provided evidence of a policy of insurance covering liability for errors and omissions relating to any activity by the foreign trust company involving residents of this State.

(h) Confirmation that the laws of the home state of the foreign trust company authorize a trust company licensed pursuant to the laws of this State to conduct business in the home state of the foreign trust company on substantially the same basis.

2. If the Commissioner approves a written request for authorization to solicit trust company business pursuant to subsection 1, the foreign trust company shall annually renew the request on a date prescribed by the Commissioner. The written request for renewal must be accompanied by:

(a) A nonrefundable renewal fee of \$250.

(b) Confirmation that the information previously provided pursuant to paragraphs (b) to (g), inclusive, of subsection 1 remains accurate or, alternatively, the provision of any such information which has been updated.

3. If the Commissioner approves a written request for authorization to solicit trust company business pursuant to subsection 1, the foreign trust company:

(a) May solicit trust company business in this State and contact existing or prospective customers.

(b) Shall not accept fiduciary appointments, execute documents that create a fiduciary relationship, make decisions regarding the investment or distribution of fiduciary assets or otherwise engage in any activity for which a license is required pursuant to this chapter.

4. The Commissioner may rely on the proper regulatory authority of the home state of a foreign trust company to examine and investigate activity conducted by the foreign trust company.

5. All money received by the Commissioner:

(a) From the payment of fees pursuant to paragraph (a) of subsection 1 must be placed in the Investigative Account for Financial Institutions created by NRS 232.545.

(b) From the payment of renewal fees pursuant to paragraph (a) of subsection 2 must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

6. As used in this section:

(a) "Foreign trust company" means a trust company licensed under the laws of another state.

(b) "Home state" means the state in which a foreign trust company maintains its principal place of business.

(c) "Trust representative office" means a place of business from which a foreign trust company may solicit trust company business and contact existing or prospective customers.

Sec. 1.4. NRS 669.095 is hereby amended to read as follows:

669.095 1. Except as otherwise provided in subsection 2, no person or organization formed and doing business under the laws of this State or any other state may:

(a) Use the word "trust" or any direct derivative of that word as a part of its name.

(b) Advertise or use any sign with the word "trust" used as a part of its name.

2. The provisions of subsection 1 do not apply to a person or organization which:

(a) Is supervised by the Commissioner of Financial Institutions pursuant to this chapter or chapters 657 to 668, inclusive, 673 or 677 of NRS;

(b) Is doing business under the laws of the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;

(c) Is authorized to engage in the solicitation of trust company business in this State pursuant to section 1.2 of this act;

(d) Is acting under an appointment pursuant to NRS 662.245;

~~(d)~~ (e) Is supervised by the Commissioner of Insurance; or

~~(e)~~ (f) Is doing business solely as a community land trust.

3. As used in this section, "community land trust" has the meaning ascribed to it in NRS 82.106.

Sec. 1.6. 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 NRS 669.092, 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~~ organized under the laws of another state and licensed to do business in this State, a request for approval and licensing must be filed with the Commissioner on such forms as the Commissioner 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. 1.8. NRS 166.015 is hereby amended to read as follows:

166.015 1. Unless the writing declares to the contrary, expressly, this chapter governs the construction, operation and enforcement, in this State, of all spendthrift trusts created in or outside this State if:

- (a) All or part of the land, rents, issues or profits affected are in this State;
- (b) All or part of the personal property, interest of money, dividends upon stock and other produce thereof, affected, are in this State;
- (c) The declared domicile of the creator of a spendthrift trust affecting personal property is in this State; or
- (d) At least one trustee qualified under subsection 2 has powers that include maintaining records and preparing income tax returns for the trust, and all or part of the administration of the trust is performed in this State.

2. If the settlor is a beneficiary of the trust, at least one trustee of a spendthrift trust must be:

- (a) A natural person who resides and has his or her domicile in this State;
- (b) A trust company that:
 - (1) Is organized under federal law or under the laws of this State or another state; and
 - (2) Maintains ~~an~~ a full-service office in this State for the transaction of business; or
- (c) A bank that:
 - (1) Is organized under federal law or under the laws of this State or another state;
 - (2) Maintains an office in this State for the transaction of business; and
 - (3) Possesses and exercises trust powers.

3. As used in this section, "trust company" does not include a foreign trust company authorized to engage only in the solicitation of trust company business in this State pursuant to section 1.2 of this act.

Sec. 2. This act becomes effective upon passage and approval.