

Title 30B

WASHINGTON TRUST INSTITUTIONS ACT

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Chapter 30B.04 RCW GENERAL PROVISIONS

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30B.04.002 Short title. This title may be known and cited as the Washington trust institutions act. [2014 c 37 § 301.]

30B.04.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

The definitions in this section shall be liberally construed to accomplish the purposes of this title. Additional defini-

tions, as applicable, are contained elsewhere in this title. The department may adopt by rule other definitions to accomplish the purposes of this title.

(1) "Account" means the client relationship established with a trust company involving the transfer of funds or property to the trust company, including a relationship in which the trust company acts as trustee, executor, administrator, guardian, custodian, conservator, bailee, receiver, registrar, or agent, but excluding a relationship in which the trust company acts solely in an advisory capacity.

(2) "Administer" with respect to real or tangible personal property means, as an agent or in another representative capacity, to possess, purchase, sell, lease, insure, safekeep, or otherwise manage the property.

(3) "Affiliate" means a company that directly or indirectly controls, is controlled by, or is under common control with a trust institution or other company.

(4) "Authorized trust institution" means a trust institution with authority to engage in trust business in Washington state pursuant to statute.

(5) "Bank" has the meaning set forth in 12 U.S.C. Sec. 1813(h); provided that the term "bank" does not include any "foreign bank" as defined in 12 U.S.C. Sec. 3101(7), except for any such foreign bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, the deposits of which are insured by the federal deposit insurance corporation.

(6) "Bank supervisory agency" means:

(a) Any agency of another state with primary responsibility for chartering and supervising a trust institution; and

(b) The office of the comptroller of the currency, the federal deposit insurance corporation, the board of governors of the federal reserve system, and any successor to these agencies.

(7) "Capital" has the meaning ascribed to that term by generally accepted accounting principles and applicable rules of the financial accounting standards board, and includes surplus and undivided profits.

(8) "Charter" means a charter or other certificate of authority issued by the director or a bank supervisory agency authorizing a trust institution to engage in business in its home state.

(9) "Client" means a person to whom a trust institution owes a duty or obligation under a trust or other account administered by the trust institution or as an advisor or agent, regardless of whether the trust institution owes a fiduciary duty to the person. The term includes the noncontingent beneficiaries of an account.

(10) "Company" includes a bank, trust company, corporation, limited liability company, partnership, association, business trust, or another trust.

(11) "Conservator" means the director or an agent of the director exercising the powers and duties provided by RCW 30B.46.010.

(12) "Control" means:

(a) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, more than twenty-five percent of the outstanding shares of a class of voting securities of a state trust company or other company;

(b) The ability to control the election of a majority of the board of a state trust company or other company;

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the director after notice and an opportunity for hearing; or

(d) The conditioning of the transfer of more than twenty-five percent of the outstanding shares or participation shares of a class of voting securities of a state trust company or other company on the transfer of more than twenty-five percent of the outstanding shares of a class of voting securities of another state trust company or other company.

(13) "Custodial account" means an account, established by a person with a bank as defined in 26 U.S.C. Sec. 408(n), or with another person approved by the internal revenue service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in United States treasury regulations under 26 U.S.C. Sec. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, any similar retirement or savings vehicle permitted under the internal revenue code of 1986, or as otherwise defined by the director by rule.

(14) "Department" means the department of financial institutions.

(15) "Depository institution" means any company chartered to act as a fiduciary and included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C. Sec. 1813(c)(2) and (3).

(16) "Director" means the director of financial institutions.

(17) "Fiduciary record" means a matter written, transcribed, recorded, received, or otherwise in the possession or control of a trust company, whether in physical or electronic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust company.

(18) "Foreign bank" means a foreign bank, as defined in section 1(b)(7) of the international banking act of 1978, chartered to act as a fiduciary in a state other than Washington state. As used in this title, "foreign bank" excludes an alien bank authorized to do business in this state under chapter 30A.42 RCW.

(19) "Home state" means:

(a) With respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office; and

(b) With respect to any other trust institution, the state which chartered such institution.

(20) "Home state regulator" means the trust institutions supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

(21) "Host state" means a state, other than the home state of a trust institution, or a foreign country in which the trust institution maintains or seeks to acquire or establish an office.

(22) "Insolvent" means a circumstance or condition in which a state trust company:

(a) Has actual cash market value of its assets which are insufficient to pay its liabilities to its creditors;

(b) Is unable or lacks the means to meet its current obligations as they come due in the regular and ordinary course of business, even if the value of its assets exceeds its liabilities;

(c) Sells or attempts to sell substantially all of its assets other than as provided in RCW 30B.44A.050 or merges or attempts to merge substantially all of its assets or business with another entity other than as provided by chapter 30B.53 RCW; or

(d) Attempts to dissolve or liquidate without approval of the director under chapter 30B.44A RCW;

(e) After demand in writing by the director, fails to cure any deficiency in its reserves as required by statute or rule;

(f) After written demand by the director, the stockholders fail to cure within the time prescribed by the director an impairment of the state trust company's capital or surplus; or

(g) Is insolvent within the meaning of the United States bankruptcy code.

(23) "Instrument" means a revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement.

(24) "Internet trust business" means a trust business that holds itself out as a trustee or fiduciary to the general public of this state by means of the internet or other electronic means.

(25) "Law firm" means a professional service corporation, professional limited liability company, or limited liability partnership, that is duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys.

(26) "Limited liability trust company" means an entity organized under the limited liability company act of this state that is chartered as a trust company under this title.

(27) "Loans and extensions of credit" means direct or indirect advances of funds by a state trust company to a person that are conditioned on the obligation of the person to repay the funds or that are repayable from specific property pledged by or on behalf of the person.

(28) "Manager" means a person elected to the board of a limited liability trust company.

(29) "Officer" means the presiding officer of the board, the principal executive officer, or another officer appointed by the board of a state trust company or other company, or a person or group of persons acting in a comparable capacity for the state trust company or other company.

(30) "Out-of-state trust institution" means a trust institution that is not a state trust company under this title.

(31) "Person" means an individual, a company, or any other legal entity.

(32) "Principal shareholder" means a person who owns or has the ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, ten percent or more of the outstanding shares or participation shares of any class of voting securities of a state trust company or other company.

(33) "Private trust" has the meaning set forth in RCW 30B.64.005.

(34) "Private trust company" has the meaning set forth in RCW 30B.64.005.

(35) "Savings association" means a depository institution, other than a credit union, that is not a bank.

(36) "Shares" means the units into which the proprietary interests of a state trust company are divided or subdivided by means of classes, series, relative rights, or preferences.

(37) "State" means a state of the United States, the District of Columbia, a territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(38) "State bank" means a bank authorized under Title 30A or 32 RCW to engage in trust business or an alien bank chartered or authorized under chapter 30A.42 RCW to engage in trust business in this state.

(39) "State savings association" means a savings association chartered or otherwise authorized under Title 33 RCW to act as a fiduciary by Washington state.

(40) "State trust company" means a corporation or a limited liability company organized or reorganized under this title, including a trust company organized under the laws of Washington state before January 5, 2015.

(41) "State trust institution," as used in chapter 30B.10 RCW, means a state trust company or an out-of-state trust institution engaged in trust business in this state.

(42) "Subsidiary" means a company that is controlled by another person. Subsidiary includes a subsidiary of a subsidiary and a lower tier subsidiary.

(43) "Trust business" means the holding out by a person to the public by advertisement, solicitation, or other means that the person is available to perform the powers of a state trust company set forth in RCW 30B.08.080(1) (b) through (k), together with any other activity authorized for a state trust company by the director pursuant to RCW 30B.08.080(1)(q) that the director designates as trust business.

(44) "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

(45) "Trust department" means that group or groups of officers and employees of a trust company organized under the supervision of officers or employees to whom are designated by the board of directors the performance of the fiduciary responsibilities of the trust company, whether or not the group or groups are so named.

(46) "Trust deposits" means the client funds held by a state trust company and authorized to be deposited with itself pending investment, distribution, or payment of debts on behalf of the client.

(47) "Trust institution" means a depository institution, foreign bank, or trust company.

(48) "Unauthorized trust activity" means to engage in trust business in this state without authority or exemption under this title. [2014 c 37 § 302.]

30B.04.010 Name of trust institution—Use of trust in name. (1) A state trust company or out-of-state trust institution may register any name with the department in connection with establishing an office or otherwise engaged in trust business in this state pursuant to this title, except that the director may determine that a name proposed to be registered is potentially misleading to the public and require the registrant to select a name which is not potentially misleading.

(2) Use of trust as part of a person's name, trademark, or service mark in connection with transacting business with the public, or as part of advertising by any person to the public, is subject to the prohibitions and restrictions under RCW 30A.04.020. [2014 c 37 § 303.]

30B.04.020 Rules—Administration and interpretation of title. (1) The director has the power to adopt rules, as he or she determines necessary and appropriate, to implement the purposes and provisions of this title in accordance with the administrative procedure act, chapter 34.05 RCW.

(2) The director has the power, and broad administrative discretion, to administer and interpret the provisions of this title to facilitate the delivery of trust business and fiduciary services to the citizens of the state of Washington by trust businesses and other persons. [2014 c 37 § 304.]

30B.04.030 Persons authorized to act as a fiduciary. Subject to the conditions, restrictions, limitations, and requirements of this title, the following persons are authorized trust institutions in Washington state:

(1) A state trust company with a certificate of authority from the director to exercise the powers of a state trust company pursuant to chapter 30B.08 RCW;

(2) A state bank under Title 30A RCW exercising trust business powers under the authority of the director;

(3) A state bank under Title 32 RCW exercising trust business powers under the authority of the director;

(4) A state savings association organized under Title 33 RCW exercising trust business powers under authority of Title 33 RCW as permitted by the director;

(5) A national bank authorized by the comptroller of the currency to act as a fiduciary in this state pursuant to 12 U.S.C. Sec. 92a;

(6) A federally chartered savings bank or savings association authorized by the comptroller of the currency to act as a fiduciary in this state;

(7) An out-of-state state-chartered bank with a branch in this state established or maintained pursuant to and with trust powers under applicable law of a home state;

(8) An out-of-state trust institution with a trust office authorized by the director pursuant to this title;

(9) An alien bank under chapter 30A.42 RCW authorized by the director to act as a fiduciary or engage in trust business in this state pursuant to this title;

(10) A private trust or private trust company exempt from the regulation of the department under chapter 30B.64 RCW; or

(11) An exempt person under this title pursuant to RCW 30B.04.040. [2014 c 37 § 305.]

30B.04.040 Activities not requiring certificate of authority or approval under this title. Notwithstanding any other provision of this title, a person is exempt from the requirement of a certificate of authority or approval under this title, or from regulation by the director pursuant to this title, if the person is:

(1) An individual, sole proprietor, or general partnership or joint venture composed of individuals;

(2) Engaging in business in this state (a) as a national banking association or (b) as a federal mutual savings bank, federal stock savings bank, or federal savings and loan association under authority of the office of the comptroller of the currency;

(3) Acting in a manner otherwise authorized by law and within the scope of authority as an agent of a trust institution with respect to an activity which is not an unauthorized trust activity;

(4) Acting as a fiduciary solely by reason of being appointed by a court to perform the duties of a trustee, guardian, conservator, or receiver;

(5) While holding oneself out to the public as an attorney-at-law, law firm, or limited license legal technician, performing a service customarily performed as an attorney-at-law, law firm, or limited license legal technician in a manner approved and authorized by the supreme court of the state of Washington;

(6) Acting as an escrow agent pursuant to the escrow agent registration act, chapter 18.44 RCW, or in one's capacity as an authorized title agent under Title 48 RCW;

(7) Acting as trustee under a deed of trust delivered only as security for the payment of money or for the performance of another act;

(8) Receiving and distributing rents and proceeds of sale as a licensed real estate broker on behalf of a principal in a manner authorized by the Washington department of licensing;

(9) Engaging in a securities transaction or providing an investment advisory service in the capacity of a licensed and registered broker-dealer, investment advisor, or registered representative thereof, provided the activity is regulated by the department or the United States securities and exchange commission;

(10) Engaging in the sale and administration of an insurance product by an insurance company or agent licensed by the office of the insurance commissioner to the extent that the activity is regulated by the office of the insurance commissioner;

(11) Acting as trustee under a voting trust as provided by Washington state law;

(12) Acting as trustee by a public, private, or independent institution of higher education or a university system authorized under Washington state law, including its affiliated foundations or corporations, with respect to endowment funds or other funds owned, controlled, provided to, or otherwise made available to such institution with respect to its educational or research purposes;

(13) Acting as a private trust or private trust company to the extent exempt from regulation of the department as set forth in chapter 30B.64 RCW; or

(14) Engaging in other activities expressly excluded from the application of this title by rule of the director. [2014 c 37 § 306.]

30B.04.050 Persons subject to the requirement of a certificate of authority or approval under this title. (1) A person may not engage in unauthorized trust activity in this state.

(2) As a condition of engaging in trust business in this state, an out-of-state trust institution is required to obtain approval from the director and is subject to all other requirements of chapter 30B.38 RCW.

(3) As a condition of engaging in trust business in this state, a person, other than an out-of-state trust institution or an exempt person under RCW 30B.04.040, is required to organize and obtain a certificate of authority as a state trust company pursuant to chapter 30B.08 RCW.

(4) A person who violates the requirements of subsection (2) or (3) of this section, as applicable, engages in unauthorized trust activity and is subject to enforcement by the director as set forth in chapter 30B.10 RCW. [2014 c 37 § 307.]

30B.04.060 Confidentiality of examination information. This title does not limit the privileges, immunities, and requirements of RCW 42.56.400(6), 30A.04.075, 32.04.220, and 33.04.110 in relation to trust companies, state banks, and state savings associations. [2014 c 37 § 308.]

30B.04.070 Limits on loans to insiders and affiliates—Exceptions. (1) A state trust company may not make loans or extensions of credit, nor extend leases, to any person except in relation to nonfiduciary corporate funds and only as set forth in this section.

(2) Unless authorized by subsection (4) of this section, a state trust company may make loans or leases to insiders only to the extent permitted for state banks under federal reserve board regulation O, 12 C.F.R. Part 215.

(3) Unless authorized by subsection (4) of this section, a state trust company may make loans or leases to affiliates as may be reasonably determined by the director by rule. In the absence of rule making to the contrary, the director shall be guided by sections 23a and 23b of the federal reserve act, 12 U.S.C. Secs. 371c and 371c-1, and federal reserve board regulation W, 12 C.F.R. Part 223, governing the permissibility of loans and leases to affiliates by state banks that are members of the federal reserve.

(4) Notwithstanding any other provision of this section, a state trust company may make loans or extensions of credit, or extend leases, in relation to nonfiduciary corporate funds, subject to approval of the director upon written application.

(5) The director may adopt rules interpreting this section and may impose further conditions and restrictions on loans and extensions of credit by state trust companies not inconsistent with this section. [2014 c 37 § 309.]

30B.04.080 Transactions in state trust company shares. (1) A state trust company may acquire its own shares if:

(a) The amount of its capital is sufficient to fully absorb the acquisition of the shares under regulatory accounting principles; or

(b) The state trust company obtains the prior written approval of the director.

(2) A state trust company may acquire a lien upon its own shares if:

(a) The aggregate amount of indebtedness so secured is less than the amount of the state trust company's capital; or

(b) The state trust company obtains the prior written approval of the director. [2014 c 37 § 310.]

30B.04.090 Investment of corporate funds—Securities. A state trust company may invest its nonfiduciary corporate funds in investments other than real estate, including securities, that are permissible for state banks under Title 30A RCW, and as may be made applicable for state trust companies by rule of the director. [2014 c 37 § 311.]

30B.04.100 Investment in corporations—Subsidiaries. Except as otherwise provided by this chapter or rules adopted under this chapter, a state trust company may invest in corporations, limited liability companies, and other entities, and may acquire or establish a subsidiary to conduct any activity that may lawfully be conducted through the form of organization chosen for the subsidiary, in accordance with that which is permissible for state banks under RCW 30A.04.125 and 30A.04.127. [2014 c 37 § 312.]

30B.04.110 Pledge of assets. A state trust company may not pledge or create a lien on any of its assets except to secure the repayment of money borrowed or as otherwise specifically authorized or required by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void. [2014 c 37 § 313.]

30B.04.120 Investment in state trust company facilities. A state trust company may purchase, hold, and convey real estate, including facilities, for the purposes permissible for state banks under RCW 30A.04.210. [2014 c 37 § 314.]

30B.04.130 Separation of trust records—Record-keeping. (1) A state trust company shall keep its fiduciary records separate and distinct from other records of the state trust company.

(2) The fiduciary records must contain all material information relative to each account as appropriate under the circumstances.

(3) A state trust company shall comply with all other conditions and requirements for state banks engaging in trust business and the deposit of securities as set forth in RCW 30A.04.240. [2014 c 37 § 315.]

30B.04.140 Legal services, advertising of—Penalty. RCW 30A.04.260 applies to this title. [2014 c 37 § 316.]

30B.04.150 Acquisition of control. Unless otherwise authorized by the director, a state trust company shall conform to all conditions and requirements concerning acquisition of control or change of control the same as if the state trust company were a state bank, as set forth in RCW

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30A.04.400 through 30A.04.410, inclusive. [2014 c 37 § 317.]

30B.04.160 Choice of law clauses. When there is a choice of law clause contained in a governing instrument in which a state trust company is a party, the choice of law of any state agreed to by the parties to such instrument shall control the interpretation and enforcement of the trust or custodial agreement comprising such instrument. [2014 c 37 § 318.]

30B.04.170 Choice of law when instrument silent. Except as set forth in RCW 30B.04.160, choice of law is governed by RCW 11.98.005. [2014 c 37 § 319.]

30B.04.180 Public notice by electronic means. (1) Notwithstanding any provisions of this title, wherever notice by publication is required by a trust institution, such notice may be undertaken by internet publication upon terms and conditions that the director may prescribe by rule.

(2) Notice to shareholders required under this title may be undertaken by electronic means in the same manner as permitted for general business corporations under RCW 23B.01.410. [2014 c 37 § 320.]

**Chapter 30B.08 RCW
ORGANIZATION AND POWERS**

Sections

- 30B.08.005 Who may organize a state trust company.
- 30B.08.010 Formation—Issuance of certificate of authority—Amendment of articles, etc.
- 30B.08.020 Limited liability company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW—Definitions.
- 30B.08.030 Application for state trust company certificate of authority.
- 30B.08.040 Notice and investigation of application.
- 30B.08.050 Required capital.
- 30B.08.060 Capital notes or debentures.
- 30B.08.070 Application of general business corporation laws.
- 30B.08.080 Powers of a state trust company.
- 30B.08.090 Additional powers of a state trust company—Federal and interstate parity.
- 30B.08.100 Scope of regulated activities of a state trust company.
- 30B.08.110 Internet trust business.

30B.08.005 Who may organize a state trust company. Subject to the other provisions of this chapter, one or more persons may organize a state trust company. [2014 c 37 § 321.]

30B.08.010 Formation—Issuance of certificate of authority—Amendment of articles, etc. Except as set forth in this chapter or as may be prescribed by rule of the director, RCW 30A.08.020, 30A.08.040, 30A.08.050, 30A.08.055, 30A.08.060, 30A.08.070, 30A.08.081, 30A.08.082, 30A.08.083, 30A.08.084, 30A.08.086, 30A.08.087, 30A.08.088, 30A.08.090, 30A.08.092, and 30A.08.170 shall, in relation to state trust companies, govern the formation, furnishing of notice, approval or refusal of articles of organization, effect of failure to commence business, issuance and treatment of shares or equity, rights of preferred or special shareholders, determination of capital impairment, treatment of authorized unissued shares, amendment of articles of organization, authorization of increase or decrease of stock or

equity, and appointment of nominees for the holding of securities, the same as if a state trust company were a state bank under Title 30A RCW. [2014 c 37 § 322.]

30B.08.020 Limited liability company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW—Definitions. (1) The provisions of RCW 30A.08.025 shall govern the organization, conversion, approval of the director, and other matters incidental to the formation and operation of a state trust company as a limited liability company.

(2) The director may adopt rules necessary to clarify, interpret, and implement this section. [2014 c 37 § 323.]

30B.08.030 Application for state trust company certificate of authority. (1) An application to organize a state trust company charter must be made under oath and in the form required by the director and must be supported by information, data, records, and opinions of counsel that the director requires.

(2) The application must be accompanied by all fees and deposits required by statute or by rule of the director.

(3) The director shall issue a certificate of authority to a state trust company charter only on proof that one or more viable markets exist within or outside of this state that may be served in a profitable manner by the establishment of the proposed state trust company. In making such a determination, the director shall:

(a) Examine the business plan which shall be submitted as part of the application for a state trust company charter; and

(b) Consider:

(i) The market or markets to be served;

(ii) Whether the proposed organizational and capital structure and amount of initial capitalization is adequate for the proposed business and location;

(iii) Whether the anticipated volume and nature of business indicates a reasonable probability of success and profitability based on the market sought to be served;

(iv) Whether the proposed officers, directors, and managers, or managing participants, as a group, have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will operate in compliance with law and that success of the proposed state trust company is probable;

(v) Whether each principal shareholder or participant has sufficient experience, ability, standing, competence, trustworthiness, and integrity to justify a belief that the proposed state trust company will be free from improper or unlawful influence or interference with respect to the state trust company's operation in compliance with law; and

(vi) Whether the organizers are acting in good faith.

(4) The failure of an applicant to furnish required information, data, opinions of counsel, other material, or the required fee is considered an abandonment of the application. [2014 c 37 § 324.]

30B.08.040 Notice and investigation of application.

(1) The director shall notify the organizers when the application is complete and accepted for filing and all required fees and deposits have been paid. Promptly after this notification,

the organizers shall publish notice of the application and solicit comments in a form specified by the director at locations reasonably necessary to solicit the views of potentially affected persons specified by the director by rule.

(2) At the expense of the organizers, the director shall investigate the application and inquire into the identity and character of each proposed director, manager, officer, managing participant, and principal shareholder or participant. The director shall prepare a written report of the investigation, and any person may request a copy of the nonconfidential portions of the application and written report under chapter 42.56 RCW.

(3) Rules adopted under this chapter may specify the confidential or nonconfidential character of information obtained by the department under this section.

(4) The financial statement of a proposed officer, director, manager, or managing participant is confidential and not subject to public disclosure under chapter 42.56 RCW. [2014 c 37 § 325.]

30B.08.050 Required capital. (1) The director shall at time of application, to organize a state trust company, determine the minimum required initial capitalization of a proposed state trust company in the manner provided for in RCW 30B.08.030(3)(b)(ii) and as further provided in this section.

(2) The director may consider the following safety and soundness factors when determining minimum required capital, including, but not limited to:

(a) The nature and type of business conducted;

(b) The nature and degree of liquidity in assets held in a corporate capacity;

(c) The amount of fiduciary assets under management;

(d) The type of fiduciary assets held and the depository of such assets;

(e) The complexity of fiduciary duties and degree of discretion undertaken;

(f) The competence and experience of management;

(g) The extent and adequacy of internal controls;

(h) The presence or absence of annual unqualified audits by an independent certified public accountant;

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

(j) The existence and adequacy of insurance obtained or held by the trust company for the purpose of protecting its clients, trust beneficiaries, and settlors;

(k) The history of operating losses, if any;

(l) The history of loss, if any, in relation to fiduciary or custodial accounts; and

(m) The amount of support from the state trust company's parent or affiliate.

(3) The effective date of a written finding requiring an existing state trust company to increase its capital must be stated in the written finding as on or after the thirty-first day after the date the written finding is mailed or delivered. Unless the state trust company requests a hearing before the director before the effective date of the written finding, the order becomes effective and is final and nonappealable. This subsection does not prohibit an application to reduce capital requirements of a proposed or an existing state trust company.

(4) Subject to subsection (2) of this section, a state trust company to which the director issues a certificate of authority shall at all times maintain capital in at least the amount required under subsection (1) of this section, plus any additional amount or less any reduction the director directs under subsection (2) of this section.

(5) Notwithstanding any provision of this section, the director may establish by rule safety and soundness standards for minimum required capital, additional required capital, and reduction of capital, for a proposed or existing state trust company. [2014 c 37 § 326.]

30B.08.060 Capital notes or debentures. (1) With the prior written approval of the director, any state trust company may at any time, through action of its board of directors, issue and sell its capital notes or debentures, which shall be subordinate to the claims of depositors and other creditors.

(2) Unless otherwise approved by the director, a state trust company shall conform to all other conditions and requirements of chapter 30A.36 RCW governing capital notes and debentures of state banks. [2014 c 37 § 327.]

30B.08.070 Application of general business corporation laws. (1) Notwithstanding any other provision of this title, a state trust company shall be deemed a distinct species of corporation or limited liability trust company whose charter may be granted, conditioned, canceled, or revoked only by the department.

(2) Title 23B RCW applies to a state trust company to the extent not inconsistent with this title or the business of a state trust company, except that:

(a) Any reference to the secretary of state means the director unless the context requires otherwise; and

(b) The right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state trust company's articles of association.

(3) Unless expressly authorized by this title or a rule of the department, a state trust company may not take an action authorized by Title 23B RCW or chapter 25.15 RCW regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which Title 23B RCW or chapter 25.15 RCW would require a filing with the secretary of state if the state trust company were a business corporation, without first submitting the filing to the director for the same purposes for which it otherwise would be required to be submitted to the secretary of state.

(4) The department may adopt rules to limit or refine the applicability of subsection (2) of this section to a state trust company or to alter or supplement the procedures and requirements of Title 23B RCW or chapter 25.15 RCW applicable to an action taken under this chapter. [2014 c 37 § 328.]

30B.08.080 Powers of a state trust company. (1) Upon the issuance of a certificate of authority to a state trust company as prescribed in this chapter, the persons named in the articles of incorporation and their successors shall thereupon become a corporation or limited liability company and may engage in trust business and other business, including without limitation:

(a) Subject to RCW 30B.08.070, exercising the powers of a Washington business corporation under Title 23B RCW

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or a Washington limited liability company under chapter 25.15 RCW reasonably necessary or helpful to enable exercise of its specific powers under this title;

(b) Receiving for safekeeping personal property of every description;

(c) Acting as assignee, bailee, conservator, custodian, recordkeeper, escrow agent, registrar, receiver, or transfer agent;

(d) Acting as financial advisor, investment advisor or manager, agent, or attorney-in-fact in any agreed upon capacity;

(e) Accepting or executing trusts, including:

(i) Acting as trustee under a written agreement;

(ii) Receiving money or other property in its capacity as trustee for investment in real or personal property;

(iii) Acting as trustee and performing the fiduciary duties committed or transferred to it by a valid and applicable court order;

(iv) Acting as trustee of the estate of a deceased person;

(v) Acting as trustee for a minor or incapacitated person;

(vi) Acting as a trustee of collective investment funds or common trust funds; or

(vii) Acting as a trustee of statutory or similar trusts;

(f) Administering in any other fiduciary capacity real or tangible personal property;

(g) Acting as an executor, administrator, guardian, or conservator;

(h) Acting as an assignee, receiver, agent, or custodian;

(i) Acting pursuant to valid and applicable court order as executor or administrator of the estate of a deceased person or as a guardian or conservator for a minor or incapacitated person;

(j) Acting in any capacity in which one exercises investment discretion on behalf of another;

(k) Exercising any incidental power or ancillary that is reasonably necessary to enable it to fully exercise, according to commonly accepted fiduciary customs and usages, the trust powers authorized by this title;

(l) Acting as a manager of a limited liability company, limited liability partnership, or similar entity;

(m) Acting as the registrar of stocks and bonds;

(n) Acting as an escrow agent, escrow holder, or managing agent;

(o) Acting as a corporate bond and transfer paying agent;

(p) Acting as a sponsoring or other member of any clearing corporation with respect to securities or other property; or

(q) Acting in any other capacity or for any other activity as determined or approved by the director.

(2) The director may prescribe rules for the safe and sound exercise of the powers enumerated in subsection (1) of this section.

(3) A state bank, to the extent authorized under Title 30A or 32 RCW, as applicable, or a state savings association, to the extent authorized under Title 33 RCW, may exercise all of the powers and authorities of a state trust company under this title, including in relation to corporate governance matters. [2014 c 37 § 329.]

30B.08.090 Additional powers of a state trust company—Federal and interstate parity. (1) Notwithstanding any restrictions, limitations, and requirements of law, in addition

tion to all powers, express or implied, that a state trust company has under the laws of this state, a state trust company has the powers and authorities conferred as of January 5, 2015, upon a federally chartered trust company doing business in this state. A state trust company may exercise the powers and authorities conferred on a federally chartered trust company after this date only if the director finds that the exercise of such powers and authorities:

(a) Serves the convenience and advantage of trustors and beneficiaries, or the general public; and

(b) Maintains the fairness of competition and parity between state trust companies and federally chartered trust companies.

(2) Notwithstanding any other provisions of law, a state trust company has the trust-related and fiduciary-related powers and authorities of an out-of-state trust institution approved by the director under chapter 30B.38 RCW.

(3) As used in this section, "powers and authorities" include without limitation powers and authorities in corporate governance and operational matters.

(4) The restrictions, limitations, and requirements applicable to specific powers and authorities of federally chartered trust companies and out-of-state state trust institutions, as applicable, shall apply to state trust companies exercising those powers or authorities permitted under this section but only insofar as the restrictions, limitations, and requirements relate to exercising the powers or authorities granted trust companies solely under this section.

(5) Notwithstanding any other provisions of law, in addition to all powers enumerated by this title, and those necessarily implied therefrom, a state trust company may engage in other business activities that have been determined by the board of governors of the federal reserve system or by the United States congress to be closely related to the business of banking, as of January 5, 2015.

(6) A state trust company that desires to perform an activity that is not authorized by subsection (5) of this section shall first apply to the director for authorization to conduct such activity. Within thirty days of the receipt of this application, the director shall determine whether the activity is closely related to the business of banking, whether the public convenience and advantage will be promoted, whether the activity is apt to create an unsafe and unsound practice by the state trust company, and whether the applicant is capable of performing such an activity. If the director finds the activity to be closely related to the business of banking and the state trust company is otherwise qualified, he or she shall immediately inform the applicant that the activity is authorized. If the director determines that such activity is not closely related to the business of banking or that the state trust company is not otherwise qualified, he or she shall promptly inform the applicant in writing. The applicant shall have the right to appeal from an unfavorable determination in accordance with the procedures of the administrative procedure act, chapter 34.05 RCW. In determining whether a particular activity is closely related to the business of banking, the director shall be guided by the rulings of the board of governors of the federal reserve system and the comptroller of the currency in making determinations in connection with the powers exercisable by bank holding companies, and the activities per-

formed by other commercial banks or their holding companies. [2014 c 37 § 330.]

30B.08.100 Scope of regulated activities of a state trust company. Notwithstanding the definition of "trust business" as set forth in RCW 30B.04.005, the director has the authority to regulate the exercise of all powers and authorities of a state trust company which are enumerated in RCW 30B.08.080 and which may be conferred by way of parity under RCW 30B.38.060. [2014 c 37 § 331.]

30B.08.110 Internet trust business. (1) A person engaged in trust business in this state by use of the internet is subject to regulation by the department under this title, unless it is:

(a) An out-of-state trust institution approved under chapter 30B.38 RCW or acting under authority of RCW 30B.72.010; or

(b) An exempt person under RCW 30B.04.040.

(2) The director may adopt rules specific to the regulation of internet trust businesses in the interest of protecting Washington state citizens. [2014 c 37 § 332.]

Chapter 30B.10 RCW

DIRECTOR'S AUTHORITY—SUPERVISION AND EXAMINATION—ENFORCEMENT

Sections

30B.10.005	Director supervision over authorized trust institutions.
30B.10.010	Fee for examination.
30B.10.020	Director to act under authority of the department's division of banks.
30B.10.030	Generally accepted accounting principles.
30B.10.040	Examination standards for state trust companies.
30B.10.050	Duties of persons subject to authority of director—Violations.
30B.10.060	Governing administrative law and procedure.
30B.10.070	Administrative orders—Penalties for violation.
30B.10.080	Suspension and removal of directors, officers, and employees.
30B.10.090	Subpoena power and examination under oath.
30B.10.100	Effect of final orders against officers, directors, employees, and agents.
30B.10.110	Director's authority to protect the public and state trust institutions.
30B.10.120	Director's subpoenas.

30B.10.005 Director supervision over authorized trust institutions. (1) In addition to his or her supervision authority over the trust business of state banks and state savings associations, the director shall exercise supervision authority over state trust companies and also over out-of-state trust institutions to the extent provided for in cooperative agreements made by the director with the home states of out-of-state trust institutions pursuant to RCW 30B.38.060.

(2) The director shall execute and enforce through the department and such other agents as exist on or after January 5, 2015, all laws which exist on or after January 5, 2015, relating to state trust companies and out-of-state trust institutions engaged in trust business in this state.

(3) For the more complete and thorough enforcement of the provisions of this title, the department is authorized to adopt rules not inconsistent with the provisions of this title, as may, in its opinion, be necessary to carry out the provisions of this title and as may be further necessary to insure safe and sound management of trust institutions under its supervision taking into consideration the appropriate interest of the cred-

itors, stockholders, participants, and the public in their relations with such trust institutions.

(4) A state trust company shall conduct its business in a manner consistent with all laws relating to trust companies, and all rules, regulations, and instructions that may be adopted or issued by the department. [2014 c 37 § 333.]

30B.10.010 Fee for examination. Examination and investigation fees, together with semiannual assessments of state trust companies and all other miscellaneous fees for trust institutions, are governed by RCW 30A.04.070 of the Washington commercial bank act and by rules adopted by the director. [2014 c 37 § 334.]

30B.10.020 Director to act under authority of the department's division of banks. All the powers, duties, and functions granted to or imposed upon the director under this title shall be exercised under the direction and supervision of the department's division of banks, subject to the delegation, oversight, and supervision of the director. Wherever provision is made in any law in effect on January 5, 2015, authorizing and permitting the director to adopt rules and regulations with respect to any actions or things required to be done under this title, such rules and regulations shall be made by the department's division of banks, and the words "the director" used in such statutes authorizing the director to make rules and regulations, shall be construed to mean the department's division of banks, and the words "department" substituted in such statutes for "director." [2014 c 37 § 335.]

30B.10.030 Generally accepted accounting principles. Unless otherwise provided for by rule of the director or other applicable rule or regulation, a state trust company shall conform to generally accepted accounting principles and applicable rules of the financial accounting standards board. [2014 c 37 § 336.]

30B.10.040 Examination standards for state trust companies. The director is authorized to adopt rules governing the examination standards for state trust companies and other persons subject to investigation and examination under this title, including the application by rule of examination standards of other federal and state financial institutions regulators and standards adopted incident to cooperative agreements made by the director under RCW 30B.38.060. [2014 c 37 § 337.]

30B.10.050 Duties of persons subject to authority of director—Violations. (1) Each person subject to the authority of the director, its subsidiaries, and their respective directors, officers, employees, and agents, shall comply with:

- (a) This title;
- (b) The rules adopted by the director pertaining to this title;
- (c) Any lawful directive or order of the director;
- (d) Any lawful supervisory agreement with the director or supervisory directive of the director; and
- (e) All applicable federal laws and regulations affecting trust institutions subject to the authority of the director.

(2) Each holding company of a person subject to the authority of the director, and its directors, officers, employees, and agents, shall comply with:

- (a) The provisions of this title that are applicable to each of them;
- (b) The rules adopted by the director with respect to such holding companies;
- (c) Any lawful direction or order of the director;
- (d) Any lawful supervisory agreement with the director; and
- (e) All applicable federal laws and regulations affecting trust institutions subject to the authority of the director.

(3) The violation of any supervisory agreement, directive, order, statute, rule, or regulation referenced in this section, in addition to any other penalty provided in this title, shall, at the option of the director, subject the offender to a penalty of up to ten thousand dollars for each offense, payable upon issuance of any order or directive of the director, which may be recovered by the attorney general in a civil action in the name of the department. [2014 c 37 § 338.]

30B.10.060 Governing administrative law and procedure. The powers and duties of the director and required practices and procedures of the department with respect to all enforcement authority conferred by this title shall be subject to the Washington administrative procedure act, chapter 34.05 RCW, consistent with the administrative procedures applicable to enforcement actions against banks, their holding companies, and their officers, directors, employees, and agents, as set forth in Title 30A RCW, including but not limited to the following:

- (1) Notice of administrative charges under RCW 30A.04.450;
- (2) The provisions relating to grounds for, procedure for obtaining, and the effective date of emergency temporary orders under RCW 30A.04.455 through 30A.04.465, inclusive;
- (3) Enforcement of department orders under RCW 30A.04.470 and 30A.04.475;
- (4) Grounds for removal of officers, directors, and employees under RCW 30A.12.040;
- (5) Procedure for suspension of an officer, director, or employee under RCW 30A.12.0401; and
- (6) Notice of charges for removal of officers, directors, and employees under RCW 30A.04.042. [2014 c 37 § 339.]

30B.10.070 Administrative orders—Penalties for violation. In addition to any other powers conferred by this title, the director shall have the power, consistent with the requirements of RCW 30B.10.060, to:

- (1) Order any person under authority of the director under this title, its holding company, its subsidiary, or any of their directors, officers, employees, or agents to cease and desist violating any provision of this title or any lawful rule;
- (2) Order any authorized trust institution, its holding company, its subsidiary, or any of their directors, officers, employees, or agents to cease and desist from a course of conduct that is unsafe or unsound and which is likely to cause insolvency or dissipation of assets or is likely to jeopardize or otherwise seriously prejudice the interests of the public in their relationship with the authorized trust institution;

(3) Order any person to cease engaging in an unauthorized trust activity; and

(4) Enter any order pursuant to RCW 30B.38.070. [2014 c 37 § 340.]

30B.10.080 Suspension and removal of directors, officers, and employees. The director has the power to require the suspension and removal from office of any officer, director, or employee of any trust institution subject to the director's authority, its holding company, or its subsidiary, who shall be found to be dishonest, incompetent, or reckless in the management of the affairs of the institution, or who persistently violates the laws of this state or the lawful orders, instructions, and rules issued or adopted by the department. [2014 c 37 § 341.]

30B.10.090 Subpoena power and examination under oath. The director shall have the power to subpoena witnesses, compel their attendance, require the production of evidence, administer oaths, and examine any person under oath in connection with any subject related to a duty imposed or a power vested in the director. [2014 c 37 § 342.]

30B.10.100 Effect of final orders against officers, directors, employees, and agents. Any present or former director, officer, or employee of a trust institution or holding company under authority of the director, or any other person against whom there is outstanding an effective final order served upon the person and who participates in any manner in the conduct of the affairs of a trust institution involved, or who directly or indirectly solicits or procures, transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations with respect to any voting rights in the trust institution, or who, without the prior approval of the director, votes for a director or serves or acts as a director, officer, employee, or agent of any bank, savings association, trust company, or holding company shall upon conviction for a violation of any order, be guilty of a gross misdemeanor punishable as prescribed under chapter 9A.20 RCW. [2014 c 37 § 343.]

30B.10.110 Director's authority to protect the public and state trust institutions. (1) Notwithstanding any other provision of this title, the director may by rule or order prohibit any person from engaging in a trust business in this state contrary to the requirements of this title if the conduct of the trust business in this state by such person harms or is likely to harm the general public, or if it adversely affects the business of state trust institutions.

(2) The director may issue a temporary cease and desist order against such person in the manner provided for in this chapter if the general public or state trust institutions are likely to be substantially injured by delay in issuing a cease and desist order.

(3) An order or rule made by the director pursuant to this section may require that any applicable person obtain a certificate of authority under chapter 30B.08 RCW as a condition of continuing to engage in a trust business in this state, subject to meeting all qualifications for grant of a state trust company certificate of authority under this title.

(4) This section does not apply to a person conducting business pursuant to RCW 30B.04.040, except for a person identifiable solely by reason of RCW 30B.04.040(1). [2014 c 37 § 344.]

30B.10.120 Director's subpoenas. (1) The director or authorized assistants may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed documents, records, or evidence are located, or in Thurston county. The application must:

(a) State that an order is sought under this section;

(b) Adequately specify the documents, records, evidence, or testimony; and

(c) Include a declaration made under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents, records, evidence, or testimony are reasonably related to an investigation within the department's authority.

(2) When an application under this section is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the documents, records, evidence, or testimony.

(3) The director or authorized assistants may seek approval and a court may issue an order under this section without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation. An application for court approval is subject to the fee and process set forth in RCW 36.18.012(3).

(4) Subsections (1) through (3) of this section are applicable to the director's enforcement authority under this title against persons engaged in unauthorized trust activity and persons, other than a state trust company authorized under this title, whom the director has reason to believe are in violation of this title. This section does not limit the authority of the director to investigate or examine a state trust company authorized under this title without applying for or obtaining a superior court order or issuing a subpoena pursuant to this section. [2014 c 37 § 345.]

Chapter 30B.12 RCW

STATE TRUST COMPANIES—BOARD OF DIRECTORS, OFFICERS, AND SHAREHOLDERS

Sections

30B.12.005	Voting securities held by state trust company.
30B.12.010	Bylaws.
30B.12.020	Board of directors, managers, or managing participants.
30B.12.030	Required board meetings.
30B.12.040	Officers.
30B.12.050	Certain criminal offenses.
30B.12.060	Board's responsibility.
30B.12.070	Bonding requirements.
30B.12.080	Reports of apparent crime.
30B.12.090	Administration of fiduciary powers.
30B.12.100	Audit committee.
30B.12.110	Shareholders—Actions authorized without meetings—Written consent.
30B.12.120	Directors, committees—Actions authorized without meetings—Written consent.

30B.12.130 Directors, committees—Meetings authorized by conference telephone or similar communications equipment.

30B.12.005 Voting securities held by state trust company. (1) Voting securities of a state trust company held by the state trust company in a fiduciary capacity under a will or trust, whether registered in its own name or in the name of its nominee, may not be voted in the election of directors or managers or on a matter affecting the compensation of directors, managers, officers, or employees of the state trust company in that capacity, unless:

(a) Under the terms of the will or trust, the manner in which the voting securities are to be voted may be determined by a donor or beneficiary of the will or trust and the donor or beneficiary actually makes the determination in the matter at issue;

(b) The terms of the will or trust expressly direct the manner in which the securities must be voted to the extent that no discretion is vested in the state trust company as fiduciary; or

(c) The securities are voted solely by a cofiduciary that is not an affiliate of the state trust company, as if the cofiduciary were the sole fiduciary.

(2) Voting securities of a state trust company that cannot be voted under this section are considered to be authorized but unissued for purposes of determining the procedures for and results of the affected vote. [2014 c 37 § 346.]

30B.12.010 Bylaws. (1) A state trust company shall adopt bylaws and may amend its bylaws from time to time for the purposes and in accordance with the procedures set forth in the Washington business corporation act.

(2) A limited liability trust company in which management is retained by the participants is not required to adopt bylaws if provisions required by law to be contained in the bylaws are contained in the articles of association or the participation agreement. If a limited liability trust company has adopted bylaws which designate each full liability participant, the limited liability trust company shall file with the director a copy of the bylaws. Solely that portion of the bylaws designating each full liability participant is a public record. [2014 c 37 § 347.]

30B.12.020 Board of directors, managers, or managing participants. (1) The board of a state trust company must consist of not fewer than five directors, managers, or managing participants. Except for a limited liability trust company in which management has been retained by its participants, the principal executive officer of the state trust company is a member of the board. The principal executive officer acting in the capacity of board member is the board's presiding officer unless the board elects a different presiding officer to perform the duties as designated by the board.

(2) Unless the director consents otherwise in writing, a person may not serve as director, manager, or managing participant of a state trust company if:

(a) The state trust company incurs an unreimbursed loss attributable to a charged-off obligation of or holds a judgment against the person or an entity that was controlled by the person at the time of funding and at the time of default on the loan that gave rise to the judgment or charged-off obligation;

(b) The person has been convicted of a felony; or

(c) The person has violated a provision of Washington state law, relating to loan of trust funds and purchase or sale of trust property by the trustee, and the violation has not been corrected.

(3) If a state trust company other than a limited liability trust company operated by managing participants does not elect directors or managers before the sixty-first day after the date of its regular annual meeting, the director may appoint a conservator under this title to operate the state trust company and elect directors or managers, as appropriate. If the conservator is unable to locate or elect persons willing and able to serve as directors or managers, the director may close the state trust company for liquidation.

(4) A vacancy on the board that reduces the number of directors, managers, or managing participants to fewer than five must be filled not later than the thirtieth day after the date the vacancy occurs. A limited liability trust company with fewer than five managing participants must add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy. After thirty days after the date the vacancy occurs, the director may appoint a conservator under this title to operate the state trust company and elect a board of not fewer than five persons to resolve the vacancy. If the conservator is unable to locate or elect five persons willing and able to serve as directors or managers, the director may close the state trust company for liquidation.

(5) Before each term to which a person is elected to serve as a director or manager of a state trust company, or annually for a person who is a managing participant, the person shall submit an affidavit for filing in the minutes of the state trust company stating that the person, to the extent applicable:

(a) Accepts the position and is not disqualified from serving in the position;

(b) Will not violate or knowingly permit an officer, director, manager, managing participant, or employee of the state trust company to violate any law applicable to the conduct of business of the state trust company; and

(c) Will diligently perform the duties of the position.

(6) An advisory director or manager is not considered a director if the advisory director or manager:

(a) Is not elected by the shareholders or participants of the state trust company;

(b) Does not vote on matters before the board or a committee of the board and is not counted for purposes of determining a quorum of the board or committee; and

(c) Provides solely general policy advice to the board. [2014 c 37 § 348.]

30B.12.030 Required board meetings. The board of a state trust company shall hold at least one regular meeting each quarter. At each regular meeting the board shall review and approve the minutes of the prior meeting and review the operations, activities, and financial condition of the state trust company. The board may designate committees from among its members to perform these duties and approve or disapprove the committees' reports at each regular meeting. All actions of the board must be recorded in its minutes. [2014 c 37 § 349.]

30B.12.040 Officers. (1) The board shall annually appoint the officers of the state trust company, who serve at the pleasure of the board. The state trust company must have a principal executive officer primarily responsible for the execution of board policies and operation of the state trust company and an officer responsible for the maintenance and storage of all corporate books and records of the state trust company and for required attestation of signatures. These positions may not be held by the same person. The board may appoint other officers of the state trust company as the board considers necessary.

(2) Unless expressly authorized by a resolution of the board recorded in its minutes, an officer or employee may not create or dispose of a state trust company asset or create or incur a liability on behalf of the state trust company.

(3) Unless otherwise approved by the director, the chief executive officer, the president, the chief operating officer, or the chief financial officer of a state trust company must be a Washington state resident. [2014 c 37 § 350.]

30B.12.050 Certain criminal offenses. (1) An officer, director, manager, managing participant, employee, shareholder, or participant of a state trust company commits an offense if the person knowingly:

(a) Conceals information or a fact, or removes, destroys, or conceals a book or record of the state trust company for the purpose of concealing information or a fact from the director or an agent of the director; or

(b) For the purpose of concealing, removes or destroys any book or record of the state trust company that is material to a pending or anticipated legal or administrative proceeding.

(2) An officer, director, manager, managing participant, or employee of a state trust company commits an offense if the person knowingly makes a false entry in the books or records or in any report or statement of the state trust company.

(3) An offense under this section is a class B felony. [2014 c 37 § 351.]

30B.12.060 Board's responsibility. The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including:

(1) The determination of policies;

(2) The investment and disposition of property held in a fiduciary capacity; and

(3) The direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers. [2014 c 37 § 352.]

30B.12.070 Bonding requirements. The board of a state trust company shall require protection and indemnity for clients in reasonable amounts consistent with the bonding requirements for a state bank under RCW 30A.12.030 and as may further be established by rule adopted under this chapter, against dishonesty, fraud, defalcation, forgery, theft, and other similar insurable losses, with corporate insurance or surety companies. [2014 c 37 § 353.]

30B.12.080 Reports of apparent crime. A trust company that is the victim of a robbery, has a shortage of corporate or fiduciary funds in excess of five thousand dollars, or is the victim of an apparent or suspected misapplication of its corporate or fiduciary funds or property in any amount by a director, manager, managing participant, officer, or employee shall report such robbery, shortages, or apparent or suspected misapplication to the director within forty-eight hours after the time it is discovered. The initial report may be oral if the report is promptly confirmed in writing. The trust company or a director, manager, managing participant, officer, employee, or agent is not subject to liability for defamation or another charge resulting from information supplied in the report. [2014 c 37 § 354.]

30B.12.090 Administration of fiduciary powers. (1)(a) The board of directors is responsible for the proper exercise of fiduciary powers by the trust company. All matters pertinent thereto, including the determination of policies, the investment and disposition of property held in a fiduciary capacity, and the direction and review of the actions of all officers, employees, and committees utilized by the trust company in the exercise of its fiduciary powers, are the responsibility of the board. In discharging this responsibility, the board of directors may assign, by action duly entered in the minutes, the administration of such of the trust company's fiduciary powers as it may consider proper to assign to such directors, officers, employees, or committees as it may designate.

(b) A fiduciary account may not be accepted without the prior approval of the board, or of the directors, officers, or committees to whom the board may have designated the performance of that responsibility.

(c) A written record shall be made of such acceptances and of the relinquishment or closing out of all fiduciary accounts. Upon the acceptance of an account for which the trust company has investment responsibilities a prompt review of the assets shall be made. The board shall also ensure that at least once during every calendar year thereafter, all the assets held in or for each fiduciary account where the bank has investment responsibilities are reviewed to determine the advisability of retaining or disposing of such assets.

(2) All officers and employees taking part in the operation of the state trust institution shall be adequately bonded.

(3) Every qualified fiduciary subject to this section and exercising fiduciary powers in this state shall designate, employ, or retain legal counsel who shall be readily available to pass upon fiduciary matters and to advise the trust company and its state trust institution.

(4)(a) The state trust institution may utilize personnel and facilities of other departments of the trust company or its affiliates, and other departments of the trust company may utilize the personnel and facilities of the state trust institution or its affiliates only to the extent not prohibited by law and as long as the separate identity of the state trust institution is preserved.

(b) Pursuant to a written agreement, a trust company exercising fiduciary powers may perform services related to the exercise of fiduciary powers for another trust company or other entity, and may purchase services related to the exercise

of fiduciary powers from another trust company or other entity.

(5) Fiduciary records shall be kept separate and distinct from other records of the trust company and maintained in compliance with RCW 30B.04.130. All fiduciary records shall be kept and retained for such time as to enable the fiduciary to furnish such information or reports with respect thereto as may be required by the director.

(6) Every such fiduciary shall keep an adequate record of all pending litigation to which it is a party in connection with its exercise of fiduciary powers. [2014 c 37 § 355.]

30B.12.100 Audit committee. A committee of directors, exclusive of any active officers of the trust company, shall at least once during each calendar year make suitable audits of the state trust institution or cause suitable audits to be made by auditors responsible only to the board of directors, and at such time shall ascertain whether the department has been administered in accordance with law, this section, and sound fiduciary principles. The board of directors may elect, in lieu of such periodic audits, to adopt an adequate continuous audit system. A report of the audits and examination required under this section, together with the action taken thereon, shall be noted in the minutes of the board of directors. [2014 c 37 § 356.]

30B.12.110 Shareholders—Actions authorized without meetings—Written consent. (1) Any action required by this title to be taken at a meeting of the shareholders of a state trust company, or any action that may be taken at a meeting of such shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) The consent has the same force and effect as a unanimous vote of shareholders and may be stated as such in any articles or documents filed under this title. [2014 c 37 § 357.]

30B.12.120 Directors, committees—Actions authorized without meetings—Written consent. (1) Unless otherwise provided by the articles of incorporation or bylaws, any action required by this title to be taken at a meeting of the directors of a state trust company, or any action which may be taken at any meeting of the directors or of a committee, may be taken without a meeting if consented to in writing or by electronic transmission, setting forth the action so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. Such consent has the same effect as a unanimous vote.

(2) For purposes of this section, the term "electronic transmission" means any form of communication not involving the transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient thereof and that may be directly reproduced in paper form by such recipient through an automated process. [2014 c 37 § 358.]

30B.12.130 Directors, committees—Meetings authorized by conference telephone or similar communications equipment. Except as may be otherwise restricted by the articles of incorporation or bylaws of a state trust company, members of its board of directors or any committee design-

ated by its board of directors may participate in a meeting of the board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by such means shall constitute presence, in person, at a meeting. [2014 c 37 § 359.]

Chapter 30B.20 RCW

STATE TRUST COMPANIES—TRUST DEPOSITS AND COMMON TRUST FUNDS

Sections

- 30B.20.005 General prohibition on deposit taking.
- 30B.20.010 Trust deposits as a client investment—Security fund.
- 30B.20.020 Common trust funds.

30B.20.005 General prohibition on deposit taking.

Except as authorized by this chapter or other governing law, a trust company may not take or hold deposits of funds in this state unless:

- (1) It is authorized to do business in this state as a depository institution; and
- (2) Complies with all applicable federal and state laws and regulations respecting the taking and handling of monetary deposits. [2014 c 37 § 360.]

30B.20.010 Trust deposits as a client investment—Security fund. (1) The director may establish by rule a plan for the safe and sound deposit of trust funds by a state trust company with itself as an investment, if:

- (a) The investment of the trust deposits is authorized in writing by the settlor or the beneficiary;
- (b) The state trust company maintains as security for the trust deposits a separate fund of securities, which are permissible for trust investments, under control of a federal reserve bank or a clearing corporation, either in this state or elsewhere;
- (c) The total market value of the security is at all times at least equal to the amount of the deposit;
- (d) The separate fund is designated as security for trust deposits;
- (e) The separate fund is maintained under the control of a bank or government agency; and
- (f) The state trust company complies with such other terms and conditions as the director may establish by rule in the interest of safety and soundness and protection of the public.

(2) A state trust company may make periodic withdrawals from or additions to the securities fund required by subsection (1) of this section as long as the required value is maintained.

(3) Income from the securities in the fund belongs to the state trust company. [2014 c 37 § 361.]

30B.20.020 Common trust funds. (1) Consistent with RCW 11.102.010, a state trust company may establish common trust funds to provide investment to itself as a fiduciary.

(2) The director may adopt rules to administer and carry out this section and RCW 11.102.010, including but not limited to rules to establish investment and participation limitations, disclosure of fees, audit requirements, limit or expand

investment authority for particular classes or categories of securities or other property, advertising, exemptions, and other requirements that may be necessary to carry out this section. [2014 c 37 § 362.]

Chapter 30B.24 RCW
STATE TRUST COMPANIES—PRUDENTIAL
FIDUCIARY STANDARDS

Sections

- 30B.24.005 Prudential fiduciary standards.
30B.24.010 Fee determination.
30B.24.020 Disclosure of conflicts of interest.

30B.24.005 Prudential fiduciary standards. (1) Except to the extent federal preemption of state law is applicable in relation to trusts governed under the federal employment retirement income security act, a state trust company acting as a trustee or other fiduciary shall comply with all applicable provisions of this title and with chapters 11.97, 11.98, 11.100, 11.102, 11.104A, 11.106, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust.

(2) The director has broad administrative authority to establish by rule or interpretation principles-based standards for examination, supervision, and enforcement of a state trust company by the department in relation to compliance with this title, including subsection (1) of this section. [2014 c 37 § 363.]

30B.24.010 Fee determination. (1) The compensation arrangement between a client and a trustee or any other fiduciary pursuant to this title shall be at arm's length and any compensation pursuant to such arrangement shall be a reasonable amount with respect to the services rendered.

(2) This section does not apply to arrangements not involving trust or client assets. [2014 c 37 § 364.]

30B.24.020 Disclosure of conflicts of interest. In addition to the provisions set out in RCW 11.98.078, if a conflict of interest may reasonably be expected to have a material adverse impact on the trustee's judgment in its provision of services to such client, the trustee must provide a reasonable disclosure of such conflict to such client. [2014 c 37 § 365.]

Chapter 30B.38 RCW
OUT-OF-STATE TRUST INSTITUTIONS

Sections

- 30B.38.005 Trust business at a trust office.
30B.38.010 Preexisting approved out-of-state trust institutions.
30B.38.020 Trust business of out-of-state trust institution—Prerequisite of reciprocity.
30B.38.030 Requirement of notice.
30B.38.040 Conditions for approval.
30B.38.050 Additional trust offices.
30B.38.060 Examinations of out-of-state trust institutions—Periodic reports—Cooperative agreements—Assessment of fees.
30B.38.070 Enforcement.
30B.38.080 Notice of subsequent merger, closing, etc.
30B.38.090 Functionally unregulated out-of-state trust institutions.

30B.38.005 Trust business at a trust office. An out-of-state trust institution that meets the requirements of

this chapter is not required to maintain a physical trust office in this state. An out-of-state trust institution that does not operate a trust office in this state and that meets the requirements of this chapter may establish and maintain a new trust office in this state. [2014 c 37 § 366.]

30B.38.010 Preexisting approved out-of-state trust institutions. Notwithstanding any other provision of this title, an out-of-state trust institution that complies with RCW 30B.38.020(1) and 30B.72.010 is exempt from the requirements of RCW 30B.38.030 and 30B.38.040. [2014 c 37 § 367.]

30B.38.020 Trust business of out-of-state trust institution—Prerequisite of reciprocity. (1) Except as authorized by federal law or by another law of this state, an out-of-state trust institution shall not be permitted to engage in a trust business in this state on more favorable terms and conditions than the terms and conditions on which state trust companies incorporated under this title and savings banks engaged in trust business under RCW 32.08.140, 32.08.142, 32.08.210, and 32.08.215 are permitted to engage in trust business in such other state.

(2) The out-of-state trust institution may exercise additional powers and authorities that are authorized under the laws of its home state if the director determines in writing that the exercise of the additional powers and authorities in this state will not threaten the safety and soundness of trust institutions in this state and serves the convenience and needs of Washington consumers. [2014 c 37 § 368.]

30B.38.030 Requirement of notice. An out-of-state trust institution desiring to engage in trust business in this state shall provide, or cause its home state regulator to provide, written notice to the director of its intent to engage in trust business in this state, accompanied by:

(1) Satisfactory written evidence of a certificate of authority to engage in trust business in its home state, or equivalent, from its home state regulator;

(2) A copy of the resolution adopted by the board of directors of such out-of-state trust institution authorizing the out-of-state trust institution to engage in trust business in this state;

(3) Written evidence of compliance with the requirements of the director set forth in subsection (1) of this section; and

(4) A filing fee, if any, as prescribed by the director under authority of RCW 30A.04.070. [2014 c 37 § 369.]

30B.38.040 Conditions for approval. (1) Except as authorized by RCW 30B.72.010, an out-of-state trust institution may not engage in trust business in this state unless:

(a) The out-of-state trust institution has confirmed in writing to the director that for as long as it maintains a trust office in this state, it will comply with all applicable laws of this state.

(b) The out-of-state trust institution has provided satisfactory evidence to the director of compliance with (i) any applicable requirements of chapter 23B.15 or 25.15 RCW and (ii) the applicable requirements of its home state regula-

tor for engaging in trust business in both its home state and this state.

(c) The director, acting within sixty days after receiving notice under RCW 30B.38.030, has certified to the home state regulator that the requirements of this chapter have been met and the notice has been approved or, if applicable, that any conditions imposed by the director pursuant to subsection (2) of this section have been satisfied.

(2) The out-of-state trust institution may commence engaging in trust business in this state on the sixty-first day after the date the director receives the notice unless the director specifies an earlier or later date.

(3) The period of review in subsection (2) of this section may be extended by the director on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may engage in trust business in this state only on prior written approval by the director. [2014 c 37 § 370.]

30B.38.050 Additional trust offices. An out-of-state trust institution that maintains a trust office in this state under this chapter may establish or acquire additional trust offices in this state to the same extent that a state trust company may establish or acquire additional offices in this state. [2014 c 37 § 371.]

30B.38.060 Examinations of out-of-state trust institutions—Periodic reports—Cooperative agreements—Assessment of fees. (1) To the extent consistent with subsections (3), (4), and (5) of this section, the director may make such examinations and investigations of an out-of-state trust institution engaged in trust business in this state as the director may deem necessary to determine whether the out-of-state trust institution is being operated and maintained in a safe and sound manner in a manner affecting this state. Unless otherwise prescribed by rule, the provisions of Title 30A RCW applicable to examination or investigation of banks shall apply to such examinations or investigations of out-of-state trust institutions.

(2) The director may require periodic reports regarding any out-of-state trust institution engaged in trust business in this state. The required reports shall be provided by such out-of-state trust institution or by the home state regulator. Any reporting requirements prescribed by the director under this subsection shall be (a) consistent with the reporting requirements applicable to state trust companies and (b) appropriate for the purpose of enabling the director to carry out his or her responsibilities under this chapter.

(3) The director may enter into cooperative, coordinating, and information-sharing agreements with any other trust institution supervisory agency with respect to the periodic examination or other supervision of an out-of-state trust institution engaging in trust business in this state, and the director may accept the report of examination and report of investigation of such agency in lieu of conducting his or her own examination or investigation.

(4) The director may enter into contracts with any trust institution supervisory agency that has concurrent jurisdiction over an out-of-state trust institution engaged in trust business in this state to engage the services of such agency's

examiners at a reasonable rate of compensation, or to provide the services of the director's examiners to such agency at a reasonable rate of compensation. Any such contract shall be deemed a sole source contract to the extent permitted under Washington state law.

(5) The director may enter into joint examinations or joint enforcement actions with other trust institutions supervisory agencies having concurrent jurisdiction over any out-of-state trust institution engaged in trust business in this state or by a state trust company doing business in any host state.

(6) Notwithstanding any other provision of this section, the director may at any time take enforcement action independently if the director deems such actions to be necessary or appropriate to carry out his or her responsibilities under this title or to ensure compliance with the laws of this state. However, in the case of an out-of-state trust institution, the director shall recognize the exclusive authority of the home state regulator over corporate governance matters and the primary responsibility of the home state regulator with respect to safety and soundness matters.

(7) An out-of-state trust institution that engages in trust business in this state and which is subject to examination by the director under any cooperative agreement between the director and the home state of the out-of-state trust institution, may be subject to supervisory, examination, and other fees, under authority of such cooperative agreement, RCW 30A.04.070, and as may be specified by rule. [2014 c 37 § 372.]

30B.38.070 Enforcement. (1) Consistent with the Washington administrative procedure act, chapter 34.05 RCW, and in the manner provided for enforcement action against a state trust company under this title, after notice and opportunity for hearing, the director may determine an out-of-state trust institution engaging in trust business in this state is in violation of any provision of the laws of this state or is operating in an unsafe and unsound manner.

(2) The director shall have the authority to take all such enforcement actions as he or she would be empowered to take if the out-of-state trust institution were a state trust company, including but not limited to issuing an order temporarily or permanently prohibiting the out-of-state trust institution from engaging in trust business in this state.

(3) The director may make a written finding that an out-of-state trust institution engaging in or proposing to engage in a trust business in this state does not meet the requirements for engaging in trust business in this state pursuant to this chapter or RCW 30B.72.010, which finding shall be effective on the date of issuance or such other date as the director shall determine.

(4) In cases involving extraordinary circumstances requiring immediate action, the director may issue a temporary order without advance notice or opportunity for hearing, subject to the out-of-state trust institution's right to petition for judicial review in the same manner as a state trust company under this title.

(5) The director will give notice to the home state regulator of each enforcement action taken against an out-of-state trust institution and, to the extent practicable, will consult and

cooperate with the home state regulator in pursuing and resolving such enforcement action. [2014 c 37 § 373.]

30B.38.080 Notice of subsequent merger, closing, etc.

Each out-of-state trust institution that maintains an office in this state pursuant to this chapter, or the home state regulator of such trust institution, shall give at least thirty days' prior written notice, or in the case of an emergency transaction, such shorter notice as is consistent with applicable state or federal law, to the director of:

(1) Any merger, consolidation, or other transaction that would cause a change of control with respect to such out-of-state trust institution or any bank holding company that controls such trust institution, with the result that an application would be required to be filed pursuant to the federal change in bank control act of 1978, 12 U.S.C. Sec. 1817(j), or the federal bank holding company act of 1956, 12 U.S.C. Sec. 1841 et seq., or any successor statutes thereto;

(2) Any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person; or

(3) The closing or disposition of any office in this state. [2014 c 37 § 374.]

30B.38.090 Functionally unregulated out-of-state trust institutions. Notwithstanding any other provision of this chapter, an out-of-state trust institution engaging in trust business in this state, which is not an exempt person under RCW 30B.04.040 and which by reason of the laws of its home state is not subject to any supervision, examination, or other safety and soundness oversight by a home state regulator, shall be subject to all the requirements of a state trust company under this title. [2014 c 37 § 375.]

Chapter 30B.44A RCW

STATE TRUST COMPANIES—VOLUNTARY DISSOLUTION AND LIQUIDATION

Sections

- 30B.44A.005 Required vote of shareholders.
- 30B.44A.010 Corporate procedure.
- 30B.44A.020 Authority to liquidate—Publication.
- 30B.44A.030 Examination and reports.
- 30B.44A.040 Unclaimed property.
- 30B.44A.050 Sale and transfer of property.

30B.44A.005 Required vote of shareholders. A state trust company may go into voluntary liquidation and be closed, and may surrender its charter and franchise as a corporation of this state by the affirmative votes of its shareholders owning two-thirds of its stock or participation shares. [2014 c 37 § 376.]

30B.44A.010 Corporate procedure. Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders or participants duly called by resolution of the board of directors or members, written notice of which, stating the purpose of the meeting, shall be mailed to each shareholder or participant, or in case of a shareholder's or participant's death, to such shareholder's or participant's legal representative or heirs at law, addressed to the shareholder's or participant's last known residence ten days

previous to the date of such meeting. If stockholders or participants shall, by the required vote, elect to liquidate a trust company, a certified copy of all proceedings of the meeting at which such action shall have been taken, verified by the oath of the president and secretary, shall be transmitted to the director for approval. [2014 c 37 § 377.]

30B.44A.020 Authority to liquidate—Publication. If the director approves the liquidation, the director shall issue to the state trust company a permit for such purpose. A permit shall not be issued by the director until the director is satisfied that provision has been made by the state trust company to satisfy and pay off all creditors. If not so satisfied, the director shall refuse to issue a permit, and is authorized to take possession of the state trust company and its assets and business, and hold the same and liquidate the state trust company in the manner provided in this title. When the director approves the voluntary liquidation of a state trust company, the directors of that state trust company shall cause to be published in a newspaper in the county in which the same is located, or if no newspaper is published in such county, then in a newspaper having a general circulation in such county, a notice that the state trust company is closing down its affairs and going into liquidation, and notify its creditors to present their claims for payment. Such notice shall be published once a week for four consecutive weeks. [2014 c 37 § 378.]

30B.44A.030 Examination and reports. When any state trust company is in process of voluntary liquidation, it is subject to examination by the director, and shall furnish such reports from time to time as may be called for by the director. [2014 c 37 § 379.]

30B.44A.040 Unclaimed property. All unclaimed property remaining in the hands of a liquidated state trust company is subject to the provisions of chapter 11.08 RCW. [2014 c 37 § 380.]

30B.44A.050 Sale and transfer of property. Any state trust company may sell and transfer to any other trust institution, whether state or federally chartered, all of its assets of every kind upon such terms as may be agreed upon and approved by the director and by two-thirds vote of its board of directors or members. A certified copy of the minutes of any meeting at which such action is taken, under the oath of the president and secretary, together with a copy of the contract of sale and transfer, shall be filed with the director. Whenever voluntary liquidation shall be approved by the director or the sale and transfer of the assets of any state trust company shall be approved by the director, a certified copy of such approval, filed in the office of the secretary of state, shall authorize the cancellation of the charter of such state trust company, subject, however, to its continued existence, as provided by this title and the general law relative to corporations. [2014 c 37 § 381.]

Chapter 30B.44B RCW

STATE TRUST COMPANIES—INVOLUNTARY DISSOLUTION AND LIQUIDATION

Sections

- 30B.44B.005 When director may take possession.
 30B.44B.010 Mutual consent to dissolution and liquidation.
 30B.44B.020 Other requirements for involuntary dissolution and liquidation.

30B.44B.005 When director may take possession. (1)

After the expiration of thirty days from the director's written notice to correct an unsafe condition of the state trust company, the director may take possession of the business and property of a state trust company to which this title is applicable whenever it appears that the state trust company:

- (a) Has violated the terms of its certificate of authority or any laws applicable thereto;
- (b) Is conducting its business in an unauthorized or unsafe manner;
- (c) Is in an unsafe or unsound condition to transact its business;
- (d) Has an impairment of its capital;
- (e) Has become otherwise insolvent;
- (f) Has neglected or refused to comply with the terms of a duly issued lawful order of the director;
- (g) Has refused, upon proper demand, to submit its records, affairs, and concerns for inspection and examination of a duly appointed or authorized examiner of the director;
- (h) Through its officers, has refused to be examined upon oath regarding its affairs; or
- (i) Has made a voluntary assignment of its assets to trustees.

(2) Notwithstanding the notice requirement in subsection (1) of this section, the director may without notice seize and take immediate possession of a state trust company if it appears to the director that the conditions of the state trust company are so hazardous that they pose an imminent threat to the general public or the interests of the state trust company's clients. [2014 c 37 § 382.]

30B.44B.010 Mutual consent to dissolution and liquidation. If the director consents, any state trust company may voluntarily place its assets and business under the control of the director for liquidation by a resolution of a majority of its directors or members upon notice to the director. Upon taking possession of the state trust company, the director, or duly appointed agent, shall retain possession thereof until the state trust company is authorized by the director to resume business or until the affairs of the state trust company are fully liquidated as provided in this chapter. A state trust company shall not make any general assignment for the benefit of its creditors except by surrendering possession of its assets to the director, as provided in this section. Whenever any state trust company for any reason suspends operations for any length of time, the state trust company shall, immediately upon such suspension of operations, be deemed in the possession of the director and subject to liquidation under this chapter. [2014 c 37 § 383.]

(2016 Ed.)

30B.44B.020 Other requirements for involuntary dissolution and liquidation. (1) To the greatest extent consistent with this title, the standards, terms and conditions, and procedures for involuntary dissolution and liquidation of a state trust company shall conform to the provisions of chapter 30A.44 RCW, excluding RCW 30A.44.010, 30A.44.020, and 30A.44.270 related to involuntary dissolution and liquidation of a bank, including the right to judicially contest the director's action as provided in RCW 30A.44.030.

(2) The director may by rule establish a uniform set of procedures consistent with this chapter. [2014 c 37 § 384.]

Chapter 30B.46 RCW

STATE TRUST COMPANIES—SUPERVISORY DIRECTION AND CONSERVATORSHIP

Sections

- 30B.46.005 Supervisory direction.
 30B.46.010 Conservatorship.

30B.46.005 Supervisory direction. (1) If upon examination or at any other time it appears to the director that a state trust company is in an unsafe condition and its condition is such as to render the continuance of its business hazardous to the public or to its clients, or if the state trust company appears to have exceeded its powers or has failed to comply with the law, or if the state trust company gives its consent, then the director shall upon his or her determination (a) notify the state trust company of his or her determination, (b) furnish to the state trust company a written list of the director's requirements to abate his or her determination, and (c) if the director makes further determination to directly supervise, he or she shall notify the state trust company that it is under the supervisory direction of the director and that the director is invoking the provisions of this chapter. If placed under supervisory direction the state trust company shall comply with the lawful requirements of the director within such time as provided in the notice of the director, subject however, to the provisions of this chapter. If the state trust company fails to comply within such time the director may appoint a conservator.

(2) To the greatest extent consistent with this title, the standards, terms and conditions, and procedures of supervisory direction, and abatement therefrom, shall be consistent with chapter 30A.46 RCW related to supervisory direction of banks.

(3) The director may establish rules related to supervisory direction consistent with this section. [2014 c 37 § 385.]

30B.46.010 Conservatorship. (1) After the period of supervisory direction specified by the director for compliance, if he or she determines that the state trust company has failed to comply with the lawful requirements imposed, the director may appoint a conservator, who shall immediately take charge of such state trust company and all of its property, books, records, and effects.

(2) The conservator shall conduct the business of the state trust company and take such steps toward the removal of the causes and conditions which have necessitated such order, as the director may direct.

(3) During the pendency of the conservatorship, the conservator shall make such reports to the director from time to time as may be required by the director, and shall be empowered to take all necessary measures to preserve, protect, and recover any assets or property of the state trust company, including claims or causes of actions belonging to or which may be asserted by the state trust company, and to deal with the same in his or her own name as conservator, and shall be empowered to file, prosecute, and defend any suit and suits which have been filed or which may thereafter be filed by or against the state trust company which are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby.

(4) The director, or any newly appointed assistant, may be appointed to serve as conservator.

(5) If the director, however, is satisfied that the state trust company is not in condition to continue business in the interest of its clients under the conservator, the director may proceed with appropriate remedies provided by other provisions of this title.

(6) The powers, duties, privileges, and immunities of a conservator appointed under this chapter shall be subject to all other applicable provisions of this title related to appointment of conservators and to all other provisions of chapter 30A.46 RCW related to the appointment of and service by conservators in relation to banks.

(7) The director may establish rules related to conservatorship of state trust companies consistent with this section. [2014 c 37 § 386.]

Chapter 30B.53 RCW

STATE TRUST COMPANIES—MERGER, CONSOLIDATION, AND CONVERSION

Sections

30B.53.002	Applicability of chapter.
30B.53.005	Definitions.
30B.53.010	Approval by director—Required.
30B.53.020	Contents of merger agreement—Approval by each board of directors—Requirements for director's approval.
30B.53.030	Approval by stockholders—Voting—Notice.
30B.53.040	Effective date of merger—Certificate of merger.
30B.53.050	Resulting trust company—Property, rights, powers, and duties.
30B.53.060	Dissenting shareholders—May receive value in cash—Appraisal.
30B.53.070	Valuation of assets—Books of merging trust company.
30B.53.080	Sale of assets.

30B.53.002 Applicability of chapter. This chapter applies to any merger or consolidation in which a state trust company is a party. [2014 c 37 § 387.]

30B.53.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Merger" includes consolidation.

(2) "Merging trust company" means a party to a merger.

(3) "Resulting trust company" means the trust company resulting from a merger.

(4) "Vote of stockholders" or "vote of classes of stockholders" means only a vote of those entitled to vote under the terms of such shares. [2014 c 37 § 388.]

30B.53.010 Approval by director—Required. Upon approval by the director, trust companies may be merged to result in a trust company. [2014 c 37 § 389.]

30B.53.020 Contents of merger agreement—Approval by each board of directors—Requirements for director's approval. (1) The board of directors of each merging trust company shall, by a majority of the entire board, approve a merger agreement that must contain:

(a) The name of each merging trust company and location of each office;

(b) With respect to the resulting trust company, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the stockholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares, and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging trust companies for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the director and the stockholders of each merging trust company;

(e) Provisions governing the manner of disposing of the shares of the resulting trust company if the shares are to be issued in the transaction and are not taken by dissenting shareholders of merging trust companies; and

(f) Any other provisions the director requires to discharge his or her duties with respect to the merger.

(2) After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board. Within sixty days after receipt by the director of the merger agreement and resolutions, the director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement is deemed approved. The director shall approve the agreement if it appears that the:

(a) Resulting trust company meets the requirements of state law as to the formation of a new trust company;

(b) Agreement provides an adequate capital in relation to the deposit liabilities, if any, of the resulting trust company and its other activities which are to continue or are to be undertaken;

(c) Agreement is fair; and

(d) Merger is not contrary to the public interest.

If the director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging trust company to amend the merger agreement to obviate such objections. [2014 c 37 § 390.]

30B.53.030 Approval by stockholders—Voting—Notice. (1) To be effective, a merger that is to result in a trust company must be approved by the stockholders of each merging trust company by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action. This vote shall constitute the adoption of the charter and bylaws of the resulting trust company, including the amendments in the merger agreement.

(2) Unless waived in writing, notice of the meeting of stockholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging trust company is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each stockholder of record of each merging trust company at the address on the books of the stockholder's trust company. No notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall state that dissenting stockholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [2014 c 37 § 391.]

30B.53.040 Effective date of merger—Certificate of merger. (1) A merger that is to result in a trust company shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the director of the executed agreement together with copies of the resolutions of the stockholders of each merging trust company approving it, certified by the trust company's president or a vice president and a secretary. The charters of the merging trust companies, other than the resulting trust company, shall immediately after that automatically terminate.

(2) The director shall immediately after that issue to the resulting trust company a certificate of merger specifying the name of each merging trust company and the name of the resulting trust company. The certificate shall be conclusive evidence of the merger and of the correctness of all proceedings regarding the merger in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging trust companies is held. [2014 c 37 § 392.]

30B.53.050 Resulting trust company—Property, rights, powers, and duties. (1) A resulting trust company is the same business and corporate entity as each merging trust company with all property, rights, powers, and duties of each merging trust company, except as affected by state law and by the charter and bylaws of the resulting trust company. A resulting trust company has the right to use the name of any merging trust company whenever it can do any act under such name more conveniently.

(2) Any reference to a merging trust company in any writing, whether executed or taking effect before or after the merger, is a reference to the resulting trust company if not inconsistent with the other provisions of that writing. [2014 c 37 § 393.]

30B.53.060 Dissenting shareholders—May receive value in cash—Appraisal. (1) The owner of shares of a trust company that were voted against a merger to result in a trust company shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting trust company at any time within thirty days after the effective date of the merger, accompanied by the surrender of the stock certificates. The value of the shares shall be determined, as of the date of the stockholders' meeting approving the merger, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares,

one by the board of directors of the resulting trust company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the director shall cause an appraisal to be made.

(2) The dissenting shareholders shall bear, on a pro rata basis based on number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting trust company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting trust company, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on number of dissenting shares owned.

(3) The resulting trust company may fix an amount which it considers to be not more than the fair market value of the shares of a merging trust company at the time of the stockholders' meeting approving the merger, that it will pay dissenting shareholders of the trust company entitled to payment in cash. The amount due under an accepted offer or under the appraisal shall constitute a debt of the resulting trust company. [2014 c 37 § 394.]

30B.53.070 Valuation of assets—Books of merging trust company. Without approval by the director, no asset shall be carried on the books of the resulting trust company at a valuation higher than that on the books of the merging trust company at the time of its last examination by a state trust examiner before the effective date of the merger or conversion. [2014 c 37 § 395.]

30B.53.080 Sale of assets. (1) The board of a state trust company, with the director's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder or participant approval if the director finds:

(a) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(b) The sale is in the best interest of the state trust company's clients and creditors.

(2) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(a) All of the state trust company's liabilities to clients and depositors;

(b) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(c) Obligations incurred by the director arising out of the supervision or sale of the state trust company; and

(d) Fees and assessments due the department.

(3) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(4) This section does not affect the director's authority to take action under another law.

(5) The sale by a trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is gov-

erned by the voluntary dissolution and liquidation provisions of chapter 30A.44 RCW. [2014 c 37 § 396.]

Chapter 30B.64 RCW
PRIVATE TRUSTS AND PRIVATE TRUST
COMPANIES

Sections

- 30B.64.005 Definitions.
30B.64.010 Private trusts and private trust companies exempt—Exception for change of control.
30B.64.020 Conversion to public trust company.
30B.64.030 Other exemptions not affected by chapter.

30B.64.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to the provisions of this chapter.

(1) "Change of control" means to transfer or sell control of a private trust or private trust company to a person or persons other than family members.

(2) "Common ancestor" has the same meaning as an individual referred to as a common ancestor in the internal revenue code, 26 U.S.C. Sec. 1361(c)(1)(B)(ii), and excludes an individual who, on an applicable date, is more than six generations removed from the youngest generation of shareholders or holders of beneficial interests in a private trust company.

(3) "Family member" means an individual who is a common ancestor, a lineal descendant of such common ancestor, or a spouse or former spouse of such common ancestor or such lineal descendant.

(4) "Private trust" means a trust created and maintained pursuant to the Washington trust act, chapter 11.98 RCW, or the laws of another state or foreign jurisdiction, in which:

(a) The trustee is a person who does not hold itself out to the general public as being engaged in trust business; and

(b) Neither the trust nor the trustee, in the capacity of trustee for the private trust, transacts business with the general public.

(5) "Private trust company" means a company acting as a private trust.

(6) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide trust or other business services, whether or not for a fee, commission, or any other type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not one hundred percent owned or controlled by one or more family members. [2014 c 37 § 397.]

30B.64.010 Private trusts and private trust companies exempt—Exception for change of control. (1) A private trust or private trust company is exempt from the requirement of a certificate of authority or regulation under this title.

(2) Notwithstanding subsection (1) of this section, a transfer or change of control of a private trust or private trust company to a person or persons other than family members constitutes unauthorized trust activity unless the resulting private trust company is a trust institution authorized to do business in this state. [2014 c 37 § 398.]

30B.64.020 Conversion to public trust company. A private trust or private trust company which seeks to convert to one transacting business with the general public in this state must apply for and obtain a certificate of authority as a state trust company under chapter 30B.08 RCW or a federal charter or charter from another state which would permit it to conduct trust business and fiduciary activities in this state without engaging in unauthorized trust activity. [2014 c 37 § 399.]

30B.64.030 Other exemptions not affected by chapter. The provisions of this chapter do not affect the exemptions for persons acting pursuant to RCW 30B.04.040. [2014 c 37 § 400.]

Chapter 30B.72 RCW
EFFECT ON PREEXISTING TRUST COMPANIES
AND TRUST BUSINESSES

Sections

- 30B.72.005 Trust companies under former Title 30 RCW.
30B.72.010 Preexisting approved out-of-state trust institutions.

30B.72.005 Trust companies under former Title 30 RCW. Trust companies under Title 30 RCW, as it existed on January 5, 2015, shall automatically succeed to and be subject to all powers and authorities, rights and obligations, privileges and immunities, and discretions of a state trust company under this title. [2014 c 37 § 401.]

30B.72.010 Preexisting approved out-of-state trust institutions. (1) An out-of-state trust institution that has, prior to January 5, 2015, obtained approval from the director under authority of Title 30 RCW, as it existed on January 5, 2015, to engage in trust business in this state and has continuously since the date of such approval held itself out to the public as engaging in trust business in this state, shall be exempt from the requirement of notice to or obtaining approval from the director pursuant to chapter 30B.38 RCW.

(2) For purposes of this section, the term "director" includes the former office of the supervisor of banks that merged into the department under authority of chapter 43.320 RCW.

(3) For purposes of this section, satisfactory evidence of approval from the director may be established only by written evidence that the director gave his or her approval prior to January 5, 2015, in the form of a certificate of authority, declaration of reciprocity between this state and the home state of the out-of-state trust institution, or the equivalent. Authorization from the secretary of state to transact business in this state as a foreign corporation or foreign limited liability company is not by itself satisfactory evidence of such approval from the director.

(4) For purposes of this section, an out-of-state trust institution with satisfactory evidence of the director's approval to engage in trust business prior to January 5, 2015, is presumed to have:

(a) Complied with RCW 30B.38.040(1); and

(b) Continuously held itself out to the public as engaging in trust business in this state since the date of the director's approval by demonstrating that it has maintained uninter-

rupted and without lapse registration with the secretary of state as a foreign corporation under chapter 23B.15 RCW or foreign limited liability company under chapter 25.15 RCW. [2014 c 37 § 402.]

Chapter 30B.98 RCW CONSTRUCTION

Sections

- 30B.98.001 Legislative declarations.
- 30B.98.003 Effective date—2014 c 37.
- 30B.98.005 Continuation of existing law.
- 30B.98.010 Title, chapter, section headings not part of law.
- 30B.98.020 Prior investments or transactions not affected.

30B.98.001 Legislative declarations. See RCW 30A.04.005.

30B.98.003 Effective date—2014 c 37. See RCW 30A.04.902.

30B.98.005 Continuation of existing law. The provisions of this title, insofar as they are substantially the same as statutory provisions repealed by chapter 37, Laws of 2014 and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [2014 c 37 § 403.]

30B.98.010 Title, chapter, section headings not part of law. Title headings, chapter or subchapter headings, and section or subsection headings as used in this title do not constitute any part of the law. [2014 c 37 § 404.]

30B.98.020 Prior investments or transactions not affected. This title does not affect the legality of investments, made prior to January 5, 2015, or of transactions had before January 5, 2015, pursuant to any provisions of law in force when such investments were made or transactions had. [2014 c 37 § 406.]

