

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 definitions, 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 controls, is controlled by, or is under common control with a trust institution.

(4) "Agent" has the same meaning as an agent at common law.

(5) "Authorized trust institution" means a trust institution with authority to engage in trust business in Washington state pursuant to federal or state law.

(6) "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.

(7) "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.

(8) "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.

(9) "Charter," "chartered," and "chartering" mean a charter or other certificate of authority issued by a financial services supervisory agency of an applicable governmental entity authorizing a trust institution to engage in business in its home state or other jurisdiction, or the act of granting or having had granted such a charter.

(10) "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.

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

(12) "Conservator" means the director or an agent of the director exercising the powers and duties provided in RCW 30B.46.060.

(13) "Control," "controls," "controlled," and "controlling," except as defined in RCW 30B.53.005 and as used in RCW 30B.04.040(12), 30B.08.030, 30B.12.020 (1) and (2), and 30B.38.080(1), mean and refer to:

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

(14) "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.

(15) "Department" means the Washington state department of financial institutions.

(16) "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).

(17) "Director" means the director of the Washington state department of financial institutions.

(18) "Federal trust institution" means a special purpose national banking association authorized by the office of the comptroller of the currency, pursuant to the national bank act, 12 U.S.C. Sec. 92a, whose charter is granted for the purpose of it engaging primarily or solely in trust or other fiduciary activities.

(19) "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.

(20) "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 Washington state under chapter 30A.42 RCW.

(21) "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.

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

(23) "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.

(24) "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.

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

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

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

(28) "Limited liability trust company" means an entity organized or reorganized under the provisions of RCW 30B.08.020 to operate as a state trust company in limited liability company form pursuant to the authority of the director under chapter 30B.08 RCW.

(29) "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.

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

(31) "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.

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

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

(34) "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.

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

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

(37) "Share" means a unit into which a proprietary interest of a trust institution is divided or subdivided by means of class, series, relative rights, or preferences, and includes beneficial interests in a state trust company organized as a corporation or limited liability company.

(38) "Shareholder" means the holder of a share as defined in this section.

(39) "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.

(40) "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 exercise trust powers in Washington state.

(41) "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.

(42) "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 Washington state.

(43) "Third-party service provider" includes an independent contractor or other person, which a trust institution has engaged to perform services to facilitate the conduct of its business as a trust institution or affiliate, to perform the following functions:

- (a) Noninternet-based data storage;
- (b) Internet-related services, mobile applications, system and software development and maintenance, and security architecture, maintenance, and monitoring;
- (c) Data processing services;
- (d) Fiduciary activities or other contracted-for services constituting "trust business" under RCW 30B.04.005;
- (e) Activities related to the trading of securities, derivatives, and other commodities;
- (f) Bookkeeping, accounting, or similar functions; or
- (g) Data analytics with respect to customers or prospective customers, or use of algorithmic technology by the trust institution in the conduct of fiduciary management.

(44) "Trust business" means the performance of, or holding out by, a person to the public by advertisement, solicitation, or other means that the person is available to perform one or more of the essential functions of trust business set forth in RCW 30B.08.080(1).

(45) "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.

(46) "Trust department" means a division, subdivision, department, or group of officers and employees of a state bank authorized by the board of directors of the state bank to exercise trust powers pursuant to authority of the director granted pursuant to RCW 30A.08.150 or 32.08.210, as applicable.

(47) "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.

(48) "Trust institution" means a depository institution or foreign bank engaged in trust business, or a trust company.

(49) "Unauthorized trust activity" means to engage in trust business in Washington state without authority or exemption under this title. [2019 c 389 § 2; 2014 c 37 § 302.]

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

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 Washington 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 or fictitious trade name, or as part of a 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. [2019 c 389 § 3; 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.]

*Reviser's note: RCW 30B.04.005 was amended by 2019 c 389 § 2, deleting the definitions of "savings association" and "state savings association."

30B.04.040 Activities not requiring certificate of authority or approval under this title. A person is exempt from the requirement of a certificate of authority or approval under 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 Washington 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 commodities or securities transaction or providing an investment advisory service in the capacity of a registered broker-dealer, investment advisor, or registered representative thereof, provided the activity is regulated by the department, the United States commodities futures trading commission, 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. [2019 c 389 § 4; 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.]

**Reviser's note:* RCW 30B.04.005 was amended by 2019 c 389 § 2, deleting the definition of "subsidiary."

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 specifically authorized by RCW 30B.20.010, or by rule, or by a finding of the director that such conduct does not violate any other

applicable law and serves the convenience of the state trust company and the public. An act, deed, conveyance, pledge, or contract in violation of this section is void. [2019 c 389 § 5; 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.04.160 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.
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- 30B.08.020 Limited liability trust company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW.
- 30B.08.030 Application for state trust company certificate of authority.
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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.]

*Reviser's note: RCW 30A.08.170 was repealed by 2019 c 389 § 103.

30B.08.020 Limited liability trust company—Organization or conversion—Approval of director—Conditions—Application of chapter 25.15 RCW. (1) If the conditions of this section are met, an applicant to become a state trust company may organize as a limited liability trust company pursuant to this chapter. An applicant to become a state trust company, which is already organized as a limited liability company pursuant to chapter 25.15 RCW, may reorganize as and convert to a limited liability trust company under this title and be granted a certificate of authority pursuant to this chapter to operate as a state trust company if all conditions of this title are met.

(2)(a) Before a state trust company organized as a corporation may reorganize and convert to a limited liability trust company, the state trust company must obtain approval of the director.

(b)(i) To obtain approval under this subsection from the director, the state trust company must file a request for approval with the director at least sixty days before the day on which the state trust company becomes a limited liability trust company.

(ii) If the director does not disapprove the request for approval within sixty days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed pursuant to this subsection, the director may:

- (A) Approve the request;
 - (B) Approve the request subject to terms and conditions the director considers necessary; or
 - (C) Disapprove the request.
- (3) To approve a request, the director must find that:

(a) The state trust company will operate in a safe and sound manner under a limited liability trust company structure; and

(b) The state trust company as a limited liability trust company has the characteristics set forth in subsections (4) and (5) of this section.

(4) Notwithstanding any provision to the contrary contained in chapter 25.15 RCW, a state trust company organized as or reorganized and converted to a limited liability trust company must be perpetual.

(5)(a) All rights, privileges, powers, duties, and obligations of a state trust company, which is organized as a limited liability trust company, and its members and managers shall be consistent with chapter 25.15 RCW, except the following:

(i) Permitting automatic dissolution or suspension of a limited liability company as set forth in RCW 25.15.265(1), pursuant to a statement of limited duration in a certificate of formation;

(ii) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in RCW 25.15.265(2);

(iii) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in RCW 25.15.265(3);

(iv) Permitting dissociation of all the members of the limited liability company, as set forth in RCW 25.15.265(4); and

(v) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the state trust company, a member's interest is treated like a share of stock in a corporation; and

(ii) If a member's interest is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest, including all economic rights and all voting rights.

(6)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of the limited liability trust company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a state trust company organized as a corporation would be or remain liable or responsible to the department.

(b) If death, incapacity, or disqualification of all members of the limited liability trust company would result in a complete dissociation of all members, then the state trust company is deemed nonetheless to remain in existence for purposes of the department having standing under chapter 30B.44B RCW to exercise the powers and authorities of a liquidating agent for the state trust company. [2019 c 389 § 6; 2014 c 37 § 323.]

30B.08.030 Application for state trust company certificate of authority. (1) An application for a certificate of authority to become a state trust company 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 including, without limita-

tion and as requested by the department, authorizations by the incorporators and any proposed officer, director, manager, or managing participant to perform third-party background checks on them, plus fingerprints of these persons obtained from acceptable fingerprinting authorities.

(2) Consistent with RCW 30B.12.020(1), the application to organize a state trust company must propose as members of the board of directors not less than five directors, managers, or managing participants, at least two of whom shall not be officers, employees, or agents of the state trust company, or otherwise in control of the state trust company, either as a principal or in a representative capacity, as "control" is defined in RCW 30B.53.005.

(3) Prior to issuance of a certificate of authority by the department, the proposed members of the board of directors, as approved by the department, must each submit a declaration in conformity with RCW 30B.12.020(5).

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

(5) The director shall issue a certificate of authority to a state trust company only on proof that one or more viable markets exist within or outside of Washington 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 certificate of authority to become a state trust company; 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.

(6) 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. [2019 c 389 § 7; 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.

(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.

(3) 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. [2019 c 389 § 8; 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.]

*Reviser's note: RCW 30B.08.030 was amended by 2019 c 389 § 7, changing subsection (3) to subsection (5).

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) A state trust company shall be deemed a distinct type of corporation or limited liability trust company whose certificate of authority may be granted, conditioned, canceled, or revoked only by the department.

(2) Title 23B RCW applies to a state trust company in corporation form and chapter 25.15 RCW in limited liability company form 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 incorporation or limited liability company agreement.

(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. [2019 c 389 § 9; 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 and its commencement of business pursuant to such certificate of authority, it shall be a corporation or limited liability company for the purpose of engaging in trust business under this title, including:

(a) 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;

(b) Acting as an attorney-in-fact in any agreed upon capacity;

(c) Acting pursuant to court order as executor, administrator, guardian, or conservator of an estate; or

(d) Regularly engaging in any other activity that the director determines by rule to be an essential function of a trust business in Washington state upon his or her finding that (i) the proposed activity of the applicant is closely akin to acting as a fiduciary, (ii) the proposed activity cannot be more effectively regulated under a statute of Washington state other than this title, and (iii) the exercise of such powers by the applicant in Washington state (A) would serve the convenience and advantage of trustors and beneficiaries, or the general public, and (B) would maintain the fairness of competition and parity between state trust companies and, as applicable, federal trust institutions or out-of-state trust institutions.

(2) The state trust company also shall be a corporation or limited liability company for the purposes of engaging in trust business under this title if the director otherwise issues a written finding, pursuant to a specific application for a certificate of authority to do business as a state trust institution in Washington state pursuant to this chapter or chapter 30B.38 RCW, that all of the criteria set forth in subsection (1)(d) of this section exist in relation to the applicant.

(3) Pursuant to such certificate of authority, a state trust company may also perform incidental activities, other than trust business, which include:

(a) Acting as a bailee or receiving for safekeeping personal property;

(b) Acting as a custodian for money or its equivalent, or for other personal property, which conduct has not otherwise been determined by rule to be trust business pursuant to subsection (1)(d) of this section;

(c) Acting as a recordkeeper for a retirement plan;

(d) Acting as the registrar of or transfer agent for stocks and bonds;

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

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

(g) Acting as a receiver;

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

(i) Conducting such other incidental activities permissible for a state trust company as the director shall prescribe by rule.

(4) The director may prescribe rules for the safe and sound exercise of the powers enumerated in subsections (1) and (3) of this section.

(5) A trust department of a state commercial bank, to the extent authorized under RCW 30A.08.150, or a trust department of a state savings bank, to the extent authorized under RCW 32.08.210, may exercise all of the powers and authorities of a state trust company under this title.

(6) A state trust company, when acting in a fiduciary capacity, either alone or jointly with an individual or individuals, may, with the consent of such individual or individuals, who are hereby authorized to give such consent, cause any stocks, securities, or other property held or acquired to be registered and held in the name of a nominee or nominees of

the state trust company without mention of the fiduciary relationship. Any such fiduciary shall be liable for any loss occasioned by the acts of any of its nominees with respect to such stocks, securities, or other property so registered. [2019 c 389 § 10; 2014 c 37 § 329.]

30B.08.090 Additional powers of a state trust company—Federal and interstate parity—Disallowance by director. (1) Notwithstanding any restrictions, limitations, and requirements of law, in addition to all powers, express or implied, that a state trust company has under the laws of Washington state, a state trust company has the powers and authorities conferred as of July 28, 2019, upon a federal trust institution. A state trust company may exercise the powers and authorities conferred on a federal trust institution 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 that is not a functionally unregulated out-of-state institution under RCW 30B.38.090.

(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 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 July 28, 2019.

(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 consider but is not bound by the rulings of the board of governors of the federal reserve system and the comptroller of the currency.

(7) Notwithstanding any of the powers and authorities granted to a state trust company under this section, the director may, upon written notice to a state trust company, disallow any such power or authority if the director finds that such power and authority cannot be exercised by the state trust company in a safe or sound manner. [2019 c 389 § 11; 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

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30B.10.003 Definitions. As used in this chapter, unless the context clearly appears otherwise, the terms in this section mean:

- (1) "Affiliate" means the same as defined in RCW 30B.04.005.
- (2) "Agent" means the same as defined in RCW 30B.04.005.
- (3) "Cause of action" means any of the acts or omissions giving rise to a violation under this chapter for which the department can pursue administrative remedies.
- (4) "Presiding officer" means a person who qualifies as a presiding officer under RCW 34.05.425 and has been authorized to act as presiding officer in an administrative proceeding under this chapter.
- (5) "Respondent" means a person against whom the director has issued a notice and statement of charges pursuant to this chapter.
- (6) "Third-party service provider" means the same as in RCW 30B.04.005. [2019 c 389 § 13.]

30B.10.005 Director supervision over authorized trust institutions. (1) The director shall exercise supervision authority over state trust companies and also over out-of-state trust institutions as set forth in this chapter or 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 Washington 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 creditors, 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. [2019 c 389 § 14; 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—Rule making—Special conditions. (1) The director is authorized to adopt rules governing the examination standards for a state trust company, trust department, third-party service provider, 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 from cooperative agreements made by the director under RCW 30B.38.060.

(2) Subject to subsection (3) of this section, such rules shall not be inconsistent with the uniform interagency trust rating system, or its equivalent, of the federal financial institutions examination council or its successor agency; and subject to subsection (3) of this section, the director shall apply the standards of the uniform interagency trust rating system, or its equivalent, in its examination and rating of state trust companies and other persons subject to investigation and examination under this title to the extent that the department has not adopted applicable rules.

(3) Notwithstanding subsection (2) of this section, the director may, in lieu of or in addition to applicable rules, prescribe special conditions for a new state trust company or an out-of-state trust company doing business in Washington state, to the extent that such special conditions contain standards of examination and rating for the state trust company or out-of-state trust company that the director deems necessary to address circumstances including, without limitation, an emerging business model, which do not appear to the director to be contemplated or adequately addressed by the uniform interagency trust rating system, or its equivalent, of the federal financial institutions examination council or its successor agency. [2019 c 389 § 16; 2014 c 37 § 337.]

30B.10.045 Examinations—Requirements—Reciprocal agreements permitted—Records, books, and accounts. (1) The director shall visit each state trust company at least once every twenty-four months, and more often

as determined by the director, for the purpose of making a full investigation into the condition of such state trust company.

(2) The director may make such other full or partial examinations as deemed necessary and may visit and examine any affiliate of a state trust company, obtain reports of condition for any such affiliate, and shall have full access to all the books, records, papers, securities, correspondence, bank accounts, and other papers of such business for such purposes.

(3) Before the director may issue notice of its intent to visit and directly examine a third-party service provider without a subpoena pursuant to RCW 30B.10.120, the director must find:

(a) That the third-party service provider either:

(i) Performs services for the state trust company that appear to be necessary for the state trust company to meet its fiduciary duty, operate in a safe and sound manner, or otherwise comply with this title and other applicable law; or

(ii) Appears that the state trust company cannot extricate itself from its client-vendor relationship without adverse material consequences or prolonged delay, including inability to timely find a replacement vendor as third-party service provider;

(b) That either:

(i) The information sought by the director cannot be otherwise accessed or verified by the records of the state trust company without direct examination of the records of the third-party service provider that relate to the state trust company; or

(ii) The third-party service provider manages an application, process, or system for the benefit of the state trust company, the integrity of which cannot be evaluated without direct examination; and

(c) That it appears prior to direct examination of the third-party service provider that an act or omission of the third-party service provider sought to be examined has resulted in a significant heightened risk of the state trust company not meeting its fiduciary duty, committing an unsafe practice or operating in an unsafe or unsound manner, or otherwise violating a provision of this title or other applicable law.

(4) Subject to notice to a state trust company and its third-party service provider accompanied by a written finding by the director that the conditions of subsection (3) of this section have been met, the director may visit and directly examine a third-party service provider of a state trust company in order to determine whether the state trust company, on account of an act or omission of the third-party service provider, is in compliance with this title and other applicable law including, without limitation, the provisions of chapter 30B.24 RCW. If prerequisites for direct examination of such third-party service provider conform to this subsection, then a subpoena pursuant to RCW 30B.10.120 shall not be required prior to a visitation and examination of such third-party service provider.

(5) Any willful false swearing in any examination is perjury in the second degree.

(6) The director may enter into cooperative and reciprocal agreements with the trust institution regulatory authorities of the United States and other states and United States territories, for the periodic examination of state trust institutions

and their affiliates. The director may accept reports of examination and other records from such authorities in lieu of conducting his or her own examinations. The director may enter into joint actions with other regulatory bodies having concurrent jurisdiction or may enter into such actions independently to carry out his or her responsibilities under this title and assure compliance with the laws of Washington state.

(7) Copies from the records, books, and accounts of a state trust institution or its affiliate shall be competent evidence in all cases, equal with originals thereof, if there is attached to such copies a declaration under penalty of perjury stating that the declarant is the officer of the state trust institution or its affiliate having charge of the original records, and that the copy is true and correct and is full so far as the same relates to the subject matter therein mentioned. [2019 c 389 § 15.]

30B.10.050 Duties of persons subject to authority of director—Violations. (1) Each person subject to the requirement of a certificate of authority or approval from the director pursuant to RCW 30B.04.050, and any director, officer, manager, employee, or agent of such person, shall not engage in any unauthorized trust activity and shall comply with:

(a) This title and Title 11 RCW;

(b) The rules adopted by the director pertaining to this title and compliance with Title 11 RCW;

(c) Any condition in the department's certificate of authority of a state trust company or in the department's approval of an out-of-state trust company doing business in Washington state including, without limitation, any condition of certificate of authority or approval made pursuant to RCW 30B.10.040(3);

(d) Any lawful order of the director;

(e) Any lawful supervisory agreement with the director or supervisory directive of the director; and

(f) All applicable federal laws and regulations affecting trust institutions subject to the authority of the director.

(2) Each affiliate of a person subject to the authority of the director under this title, and any director, officer, manager, employee, or agent of such affiliate, shall not engage in any unauthorized trust activity and shall comply with:

(a) The provisions of this title and Title 11 RCW, to the extent that any act or omission of the affiliate, or a director, officer, manager, employee, or agent of such affiliate, affects the safety and soundness and compliance with the law of a person subject to the authority of this title;

(b) The rules adopted by the director with respect to such affiliate;

(c) Any lawful 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 a trust institution or its affiliate subject to the authority of the director.

(3) The violation of any supervisory agreement, supervisory 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. [2019 c 389 § 17; 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 this chapter. [2019 c 389 § 18; 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 this chapter, to order:

(1) Any person, its affiliate, or any director, officer, manager, employee, or agent of such person or its affiliate, subject to the authority of RCW 30B.10.050, to cease and desist engaging in any unauthorized trust activity or violating any provision of this title or any lawful rule;

(2) Any state trust institution, its affiliate, or any director, officer, manager, employee, or agent of the state trust institution or its affiliate to cease and desist from a course of conduct that is unsafe or unsound or 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 state trust institution;

(3) Any person, its affiliate, or any director, officer, manager, employee, or agent of such person or its affiliate, subject to the authority of RCW 30B.10.050, to take affirmative action to avoid or refrain from unauthorized trust activity, an unsafe or unsound practice, or other violation of this title;

(4) The imposition of fines;

(5) Restitution to beneficiaries, trustors, or other aggrieved persons;

(6) Costs and expenses related to investigation and enforcement, including attorney fees; and

(7) Other remedies authorized by law. [2019 c 389 § 19; 2014 c 37 § 340.]

30B.10.080 Suspension and removal of directors, officers, and employees. (1) In addition to the remedies set forth in RCW 30B.10.070, the director may, as applicable, issue and serve a current or former director, officer, manager, or employee of a state trust company or its affiliate with written notice of intent to remove such person from office or employment, or to prohibit such person from participating in the conduct of the affairs of the state trust company, its affiliate, or any depository institution, trust company, or affiliate of such depository institution or trust company, doing business in Washington state, whenever:

(a) Such person has committed an unsafe or unsound practice or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b)(i) The state trust company has suffered or is likely to suffer substantial financial loss or other damage as a result of the person's acts or omissions as set forth in (a) of this subsection; or

(ii) The interests of beneficiaries, trustors, shareholders, or the general public could be seriously prejudiced by reason of the person's acts or omissions as set forth in (a) of this subsection.

(2) The director may also serve upon the same respondent a written notice and order suspending the respondent from further participation in any manner in the conduct of the affairs of the state trust company, its affiliate, or any depository institution, trust company, or affiliate of such depository institution or trust company, doing business in Washington state, pending resolution of the charges made pursuant to subsection (1) of this section, if the director determines that such an action is necessary for the protection of: The state trust company or its affiliate; the interests of beneficiaries, trustors, or shareholders of the state trust company or its affiliate; the interests of any depository institution or its depositors, trust beneficiaries, borrowers, or shareholders; or the general public.

(3) A suspension order issued by the director is effective upon service and, unless the superior court issues a stay of such order, such order shall remain in effect and enforceable until:

(a) The director dismisses the charges contained in the notice served on the person; or

(b) The effective date of a final order for removal of such person. [2019 c 389 § 24; 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. A present or former director, officer, manager, employee, or agent of a state trust institution or affiliate, or any other person against whom there is outstanding an effective final order under authority of this chapter which has been duly served is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW, if such person thereafter:

(1) Participates in any manner in the conduct of the affairs of a state trust institution or affiliate;

(2) 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 state trust institution or affiliate;

(3) Without the prior approval of the department, votes for a director;

(4) Serves or acts as a director, officer, manager, employee, or agent of any depository institution, trust company, or affiliate of a depository institution or trust company doing business in Washington state. [2019 c 389 § 30; 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 Washington state contrary to the requirements of this title if the

conduct of the trust business in Washington 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 an emergency cease and desist order against such person in the manner provided for in RCW 30B.10.180 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 Washington 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). [2019 c 389 § 31; 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.]

30B.10.130 Scope of chapter—Remedies. (1) This chapter sets forth the authority of the department to supervise and examine state trust institutions and to seek adjudicative

enforcement remedies against persons, and their affiliates, officers, directors, managers, employees, and agents, engaged in authorized or nonauthorized and nonexempt trust business in Washington state.

(2) None of the provisions in this chapter shall be deemed to be an exclusive remedy of the department, and the department may, as applicable, exercise other remedies set forth elsewhere in this title and in other Washington law including, without limitation:

(a) The issuance of a supervisory directive, nonadjudicative corrective action order, or nonadjudicative order of conservatorship pursuant to chapter 30B.46 RCW; and

(b) The issuance of nonadjudicative orders for involuntary dissolution and liquidation of a state trust company pursuant to chapter 30B.44B RCW. [2019 c 389 § 12.]

30B.10.140 Hearing—Who may conduct—Authority. (1) A hearing pursuant to a notice of charges under this chapter must be conducted in accordance with chapter 34.05 RCW, except to the extent otherwise provided in this chapter.

(2) Such hearing may be held at a place designated by the director and, at the option of the director, may be conducted by a delegated presiding officer whom the director appoints without referral to the office of administrative hearings.

(3) The hearing shall be conducted in accordance with this chapter, chapter 34.05 RCW, and chapters 10-08 and 208-08 WAC.

(4) If the department elects to conduct a hearing as permitted by subsection (2) of this section, the director must appoint a presiding officer from outside the division of banks, who may be either an employee from another division, an independent contractor, or an administrative law judge of the office of administrative hearings.

(5) Such hearing shall be private unless the director determines that a public hearing is necessary to protect the public interest upon good cause shown in a motion by the respondent, if any, to make the hearing public.

(6) The director may elect to either retain authority to issue a final order or may delegate such authority to the presiding officer appointed pursuant to subsection (2) of this section. [2019 c 389 § 20.]

30B.10.150 Notice of charges. (1) The director may issue and serve a notice of charges upon:

- (a) A state trust institution;
- (b) An affiliate of a state trust institution;
- (c) A director, officer, manager, employee, or agent of a state trust institution or its affiliate; or
- (d) Any other person subject to the jurisdiction of the department under this title including, without limitation, a person engaged in unauthorized trust activity.

(2) Such notice of charges may be issued to and served upon any person or entity described in subsection (1) of this section whenever such person or entity:

- (a) Has engaged in an unsafe or unsound practice;
- (b) Has violated any provision of RCW 30B.10.050; or
- (c) Is planning, attempting, or currently conducting any act prohibited in (a) or (b) of this subsection.

(3) The notice shall contain a statement of the facts constituting the acts or omissions specified in subsection (2) of this section.

(4) The notice shall set a time and place at which a hearing will be held to determine whether the following remedies should be granted:

- (a) An order to cease and desist any of the acts or omissions specified in subsection (2) of this section;
- (b) An order compelling affirmative action to redress any of the acts or omissions specified in subsection (2) of this section;
- (c) An order imposing fines as authorized by RCW 30B.10.070;
- (d) Restitution to beneficiaries, trustors, or other aggrieved persons;
- (e) Costs and expenses related to investigation and enforcement, including attorney fees; and
- (f) Other remedies authorized by law. [2019 c 389 § 21.]

30B.10.160 Hearing—Schedule—Default. (1) The hearing shall be held not earlier than ten days or later than thirty days after service of the notice set forth in RCW 30B.10.150, unless a later date is set by the director for good cause as requested by the respondent.

(2) Unless the respondent appears at the hearing set forth in subsection (1) of this section, a default order granting any of the remedies or sanctions set forth in the notice and statement of charges may be issued by the presiding officer, consistent with RCW 34.05.440(2).

(3) A respondent may file with the presiding officer, within seven days of service of the default order, a motion to set aside a default order consistent with RCW 34.05.440(3). If the presiding officer does not issue a ruling within five business days of the motion being filed, then the motion to set aside is denied. [2019 c 389 § 22.]

30B.10.170 Hearing—Order—Review or appeal. (1) The presiding officer shall have sixty days after the hearing to issue an order, including findings of fact and conclusions of law, consistent with RCW 34.05.461(3).

(2) If the director has not delegated his or her authority to a presiding officer to issue a final order, a party may bring a petition for review of the presiding officer's initial order before the director, consistent with RCW 34.05.464.

(3) If the director has previously delegated his or her authority for the presiding officer to issue a final order, then the order of such presiding officer shall be final and may be appealable to the superior court of Washington, consistent with RCW 34.05.514.

(4) The commencement of proceedings for judicial review shall not operate as a stay of any order issued by the director unless specifically ordered by the court. [2019 c 389 § 23.]

30B.10.180 Emergency order—Judicial review. (1) When the director finds it necessary for one or more of the purposes set forth in subsection (2) of this section, the director may issue and serve an emergency order upon:

- (a) A state trust institution, its affiliate, a director, officer, manager, employee, or agent of such state trust institution or its affiliate, or any person subject to the authority of this title, requiring the respondent to take immediate affirmative action or immediately cease and desist from any act, practice, or omission or failure to act; or

- (b) A director, officer, manager, or employee of a state trust company or its affiliate to suspend or remove such person from his or her office or employment with the state trust company or its affiliate pursuant to RCW 30B.10.080.

(2) Such emergency order may be issued to:

- (a) Ensure the safety or soundness of the authorized trust institution;
- (b) Prevent the state trust institution's insolvency or inability to pay its obligations in the ordinary course of business;
- (c) Prevent significant or critical undercapitalization or substantial dissipation of assets;
- (d) Compel timely compliance with a supervisory agreement, supervisory directive, or order of the director;
- (e) Compel production of or access to its books, papers, records, or affairs as directed by the department or other applicable financial services regulator;
- (f) Prevent immediate and irreparable harm to the public interest, interests of the trustors or beneficiaries, or condition of the state trust institution; or
- (g) Prevent fraudulent activity.

(3) The emergency order must:

- (a) Be served upon each entity or person subject to the order by personal delivery or registered or certified mail, return receipt requested, to the entity or person's last known address;
- (b) State the specific acts or omissions at issue and require the entity or person to immediately comply with the order; and
- (c) Contain a notice that a request for hearing may be filed by the respondent within ten days of service with the superior court, as set forth in subsection (5) of this section.

(4) Unless a respondent against whom the order is directed files a petition for judicial review with the court within ten days after the order is served under this section, the order is nonappealable and any right to a hearing is deemed conclusively waived as to that respondent.

(5) A petition for judicial review must:

- (a) Be filed with the superior court of the county of the principal place of business of the respondent or, in the case of the respondent not being domiciled in Washington state, the Thurston county superior court;
- (b) State the specific respondents seeking review of the order;

and

- (c) State the specific grounds and authority to set aside or modify the order.

(6) Upon receipt of a timely filed petition for review, the court shall set the time and place of a hearing, no later than ten business days after the petition for review is filed, unless otherwise agreed by the parties.

(7) The department shall bear the burden of proof by a preponderance of evidence.

(8) Pending judicial review, the emergency order shall continue in full force and effect unless the order is stayed by the department. [2019 c 389 § 25.]

30B.10.190 Order of prohibition against third-party service providers—Grounds—Notice. (1) The director may issue and serve a state trust institution, or its affiliate, with written notice of intent to prohibit it from permitting a

third-party service provider of such state trust institution or affiliate from participating in the conduct of the affairs of the state trust institution, whenever:

(a) The third-party service provider commits an unsafe or unsound practice, or a violation or practice involving a breach of fiduciary duty, personal dishonesty, recklessness, or incompetence; and

(b)(i) The state trust institution or its affiliate has suffered or is likely to suffer substantial financial loss or other damage; or

(ii) The interests of the state trust institution, or its affiliate, or their beneficiaries, trustors, shareholders, or the general public in Washington state could be seriously prejudiced by reason of the violation or practice of the third-party service provider.

(2) The director shall also serve any affected third-party service provider with the notice described in subsection (1) of this section, and such third-party service provider shall be deemed a real party in interest with the same right to notice and right to intervene in the administrative action and defend against it as if the third-party service provider were the respondent. [2019 c 389 § 26.]

30B.10.200 Notice of intention to remove or prohibit participation in conduct of affairs—Hearing—Order. (1) A notice pursuant to RCW 30B.10.080 or 30B.10.190 shall:

(a) Contain a statement of the facts that constitute grounds for removal or prohibition; and

(b) Set a time and place at which a hearing will be held.

(2) The hearing shall be set not earlier than ten days or later than thirty days after the date of service of the notice unless an earlier or later date is set by the director at the request of the board trustee or director, officer, or employee for good cause shown or at the request of the attorney general of the state.

(3) Unless the respondent appears at the hearing personally or by a representative authorized under WAC 208-08-030, the respondent shall be deemed to have consented to the issuance of an order of removal or prohibition or both. In the event of such consent or if upon the record made at the hearing the director finds that any of the grounds specified in the notice have been established, the director may issue such order of removal or prohibition from participation in the conduct of the affairs of the state trust company, out-of-state trust company doing business in Washington state, or affiliate, as the director may consider appropriate.

(4) Any order under this section shall become effective at the expiration of ten days after service upon the respondent, except that an order issued upon consent shall become effective at the time specified in the order.

(5) An order shall remain effective except to the extent it is stayed, modified, terminated, or set aside by the director or a reviewing court. [2019 c 389 § 27.]

30B.10.210 Authority of director to seek removal by the board of a state trust company. (1) In addition to any other remedy set forth in this chapter, the director may notify, in writing, the board of directors of any state trust company that the director has information that any member of the board of directors, officer, manager, employee, or agent of the state trust company or affiliate of the state trust company

is dishonest, reckless, or incompetent, or is failing to perform any duty required of the state trust company or such affiliate.

(2) The board shall then meet to consider such matter as soon as reasonably feasible, but no later than thirty calendar days of the director's notice.

(3) The director shall have notice of the time and place of such meeting and an opportunity to appear at such meeting and address the board of directors concerning the director's information.

(4) If the board finds the director's information to be well-founded, and the affected member of the board of directors, officer, employee, or agent of the state trust company or such affiliate is working under an employment contract or independent contractor agreement that prohibits termination without cause, the board shall notify such member of the board of directors, officer, employee, or agent of the board's intent to remove him or her from the position, or to otherwise instruct such affiliate to do so, as applicable. Such notice shall be in writing and include:

(a) Notice of the allegations;

(b) Specific facts supporting the allegations; and

(c) A time and place at which such member of the board of directors, officer, employee, or agent will have an opportunity to be heard before a final action is taken by the board.

(5) Pursuant to subsection (4) of this section, the board shall set the time and place of the meeting no sooner than ten business days after such member of the board of directors, officer, employee, or agent receives notice of the board's intent to remove or terminate the contract.

(6) If the board finds the director's information to be well-founded, and the affected member of the board of directors, officer, manager, employee, or agent may be terminated without cause, such director, officer, manager, employee, or agent may be removed by the state trust company or such affiliate, or their contract may be terminated, at the option of the board.

(7) If the board does not remove such director, officer, employee, or agent, or if the board fails to meet, consider, or act upon the director's information within twenty days after receiving the same, then the director may within twenty days after, or earlier in the case of the necessity of an emergency order under RCW 30B.10.070, seek removal of such person by complying with the applicable provisions of this chapter.

(8) This section shall not be deemed to be an exclusive remedy of the department. The department may exercise any other remedies available to it under this chapter. [2019 c 389 § 28.]

30B.10.220 Jurisdiction of courts as to the department's enforcement orders—Venue. (1) The director may apply to a superior court of Washington for the enforcement of any effective and outstanding final order issued pursuant to this chapter, and the superior court shall have jurisdiction to order compliance with such final order.

(2) No court shall have jurisdiction to affect by injunction or otherwise the department's issuance or enforcement of any order pursuant to this chapter, or to review, modify, suspend, terminate, or set aside such order, except as provided in this chapter.

(3) The venue for enforcement of a final order by the department under this chapter shall be the superior court in

the county of the principal place of business of the person upon whom the order is imposed or, in the case of such person not being domiciled in Washington state, the venue shall be Thurston county superior court. [2019 c 389 § 29.]

30B.10.230 General penalty—Effect of conviction.

(1) A person who shall knowingly violate or knowingly aid or abet the violation of any provision of RCW 30B.10.050 shall be guilty of a misdemeanor.

(2) A director, officer, manager, employee, or agent of a state trust institution or affiliate who has had imposed upon him or her a criminal conviction for the violation of this title or any other financial services law of this or any other state or of the United States shall not be permitted to engage in or become or remain a board director, officer, manager, employee, or agent of any state trust company or its affiliate doing business in Washington state. [2019 c 389 § 32.]

30B.10.240 Statute of limitations. (1) An action seeking any remedy under RCW 30B.10.070, 30B.10.080, or 30B.10.190 shall commence no later than five years after the cause of action accrued.

(2) A cause of action under this section is deemed to have accrued at the later of the following events:

(a) The occurrence of the act or omission;

(b) When the department discovers or should have discovered that the act or omission has occurred;

(c) When the department discovers or should have discovered that the act or omission has negatively impacted the capital status or other element of safety or soundness of a state trust company or out-of-state trust company doing business in Washington state; or

(d) Where an act or omission is part of a pattern or practice, upon the occurrence of the most recent act or omission comprising the pattern or practice. A cause of action under this subsection may include all acts or omissions comprising the pattern or practice if the cause of action is timely as to the most recent act or omission. [2019 c 389 § 33.]

Chapter 30B.12 RCW

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

Sections

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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, at least two of whom shall not be officers, managers, employees, or agents of the state trust company, or otherwise in control of the state trust company, either as a principal or in a representative capacity, as "control" is defined in RCW 30B.53.005. 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

as determined by the definition of "control" set forth in RCW 30B.53.005;

(b) The person has been convicted of a felony or a crime involving personal dishonesty; 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 a declaration under penalty of perjury 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.

(7) Notwithstanding any other provision of this section to the contrary, a state trust company shall have directors, managers, or managing participants, and committees or subcommittees composed of such directors, managers, or managing participants, consistent with the requirements of RCW 30B.24.030 and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040, as adopted by the board and subject to approval of the department. [2019 c 389 § 34; 2014 c 37 § 348.]

(2020 Ed.)

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, manager, 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, or an officer of the state trust company with an equivalent function, must be a Washington state resident.

(4) Notwithstanding any other provision of this section to the contrary, the board of a state trust company shall designate officers and committees or subcommittees composed of such officers, consistent with the requirements of RCW 30B.24.030 and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040, as adopted by the board and subject to approval of the department. [2019 c 389 § 35; 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;
- (3) The direction and review of the actions of each officer, manager, employee, committee, and agent used by the state trust company in the exercise of its fiduciary powers; and
- (4) Every other requirement of the board as set forth in RCW 30B.24.030 and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040, as adopted by the board and subject to approval of the department. [2019 c 389 § 36; 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 Washington 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.

(7) Notwithstanding any other provision of this section to the contrary, a state trust company and its directors, officers, managers, employees, and committees shall exercise administration of fiduciary powers consistent with the requirements of RCW 30B.24.030 and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040, as adopted by the board and subject to approval of the department. [2019 c 389 § 37; 2014 c 37 § 355.]

30B.12.100 Audit—Fiduciary audit committee. (1) A state trust company shall have a fiduciary audit committee, which shall exercise fiduciary responsibilities, administer fiduciary powers, and report to the board of directors consistent with the requirements of this section, RCW 30B.24.030, and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040.

(2) At least once during each calendar year, a state trust company shall arrange for a suitable audit by internal or external auditors of all significant fiduciary activities, under the direction of its fiduciary audit committee, unless the state

trust company adopts a continuous audit system in accordance with subsection (3) of this section. The state trust company shall note the results of the audit, including significant actions taken as a result of the audit, in the minutes of the board of directors.

(3) In lieu of performing annual audits under subsection (2) of this section, a state trust company may adopt a continuous audit system under which the state trust company arranges for a discrete audit by internal or external auditors of each significant fiduciary activity on an activity-by-activity basis, under the direction of its fiduciary audit committee, at an interval commensurate with the nature and risk of that activity. Under such a system, certain fiduciary activities may receive audits at intervals greater or less than one year, as appropriate. A state trust company that adopts a continuous audit system pursuant to this subsection shall note the results of all discrete audits performed since the last audit report, including significant actions taken as a result of the audits, in the minutes of the board of directors at least once during each calendar year.

(4) A state trust company's fiduciary audit committee may consist of the entire board of directors, or it may comprise either a committee of the bank's directors or an audit committee of an affiliate of the state trust company. However, in either case, the committee:

(a) Must not include any officers of the state trust company or an affiliate who participate significantly in the administration of the state trust company's fiduciary activities; and

(b) Must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the state trust company.

(5) The requirements of subsections (1) through (4) of this section shall be separate from and in addition to any audits of the nonfiduciary operations of the state trust company, if any. [2019 c 389 § 38; 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 designated 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.]

30B.12.140 Fidelity bonds—Liability insurance—Additional insurance—Authority of director. (1) Except as otherwise permitted by the director under specified terms and conditions, the board of directors of a state trust company shall direct and require good and sufficient fidelity bonds and liability insurance, issued by a company authorized to engage in the insurance business in the state of Washington, covering the state trust company and all of its active directors, officers, managers, and employees. Bonds or coverage shall provide for indemnity to the state trust company on account of any losses sustained by it as the result of any dishonest, fraudulent, or criminal act or omission committed or omitted by directors, officers, managers, and employees, acting independently or in collusion or combination with any person. Such bonds or coverage may be individual, schedule, or blanket form, and premiums shall be paid by the state trust company.

(2) Except as otherwise permitted by the director under specified terms and conditions, the board of directors of a state trust company shall direct and require good and sufficient liability insurance, including errors and omissions coverage, for the negligent or reckless acts and omissions of directors, officers, fiduciary managers, and employees. Such coverage shall be paid by the state trust company.

(3) Except as otherwise permitted by the director under specified terms and conditions, the directors shall also direct and require suitable insurance protection to the state trust company, as necessary, against burglary, robbery, theft, and other similar insurance hazards to which the state trust company may be exposed in the operations of its business on the premises or elsewhere.

(4) The directors shall be responsible for prescribing at least once in each year the amount of such bonds or policies and the sureties or underwriters to be engaged, after giving due consideration to all known elements and factors constituting known risks or hazards. Such action of the directors shall be recorded in the board minutes.

(5) The director may by rule prescribe requirements for bond and insurance coverage that are more specific and derogation of the provision of subsections (1) through (4) of this section if the director determines that such a rule is necessary

to conform to the market availability of certain bond and insurance coverages. [2019 c 389 § 39.]

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—Collective investment 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—Collective investment 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.

(3) A state trust company that invests in a collective investment fund shall make investments as required by RCW 30B.24.030 and in conformity with the contents of the state trust company's written statement of principles of trust management, pursuant to RCW 30B.24.040, as adopted by the board and subject to approval of the department. A state trust company shall also comply with RCW 30B.24.020 in avoiding conflicts of interest and self-dealing in relation to a collective investment fund.

(4) Unless otherwise prescribed by the director by rule, a state trust company shall be required to establish and maintain collective investment funds the same as required for a federally insured state bank with authorized trust powers, taking into account federal rules applicable to a federally insured state bank in relation to a collective trust fund that require a written plan and specific requirements for fund management including, without limitation, provision for proportionate interests, methods and frequency of valuation of all or portions of the fund, admission and withdrawal of accounts, methods of distribution, segregation of investments, audit and financial reports related to the collective investment fund, advertising restrictions, management fees, expenses, and prohibition against certificates.

(5) Notwithstanding the general use of the term "affiliate" in this title as defined in RCW 30B.04.005, nothing in this chapter shall be construed as exempting or modifying a requirement of a state trust institution with respect to RCW 11.102.010. [2019 c 389 § 40; 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 Conflicts of interest.
 30B.24.030 Compliance with fiduciary activities standards equivalent to that of national banks—Statement of principles of trust management—Management of third-party risk.
 30B.24.040 Written statement of principles of trust management required—Contents.
 30B.24.050 Call report.
 30B.24.060 Compliance with the bank secrecy act—Management of third-party risk—Cybersecurity—Examination.

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 shall comply with all applicable provisions of this title and with applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, *11.98A, 11.100, 11.102, 11.104A, 11.106, 11.107, 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.

(3) A state bank, in relation to its trust department and its exercise of trust powers, shall comply with:

(a) Title 30A RCW, if a state commercial bank, and Title 32 RCW, if a state savings bank;

(b) The applicable provisions of Title 11 RCW including, without limitation, chapters 11.97, 11.98, *11.98A, 11.100, 11.102, 11.104A, 11.106, 11.107, and 11.108 RCW, and with chapter 11.110 RCW, in the case of a charitable trust;

(c) If the state bank is federally insured, any applicable rules and guidance of the federal deposit insurance corporation or other applicable federal law or regulation related to such state bank's exercise of trust powers; and

(d) If the state bank is a member of the federal reserve system, any rules and guidance of the board of governors of the federal reserve system related to such state bank's exercise of trust powers. [2019 c 389 § 41; 2014 c 37 § 363.]

*Reviser's note: Chapter 11.98A RCW was repealed in its entirety by 2020 c 303 § 19, effective January 1, 2021.

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 Conflicts of interest. (1) 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.

(2) Unless authorized by other law, a state trust company may not invest funds of a fiduciary account over which it has investment discretion in the shares or obligations of, or in assets acquired from: The state trust company or any of its directors, officers, managers, or employees; affiliates of the state trust company or any of their directors, officers, managers, or employees; or individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the state trust company.

(3) If retention of shares or obligations of the state trust company or its affiliates in a fiduciary account is consistent with applicable law, the state trust company may:

(a) Exercise rights to purchase additional shares, or securities convertible into additional shares, when offered pro rata to shareholders; and

(b) Purchase fractional shares to complement fractional shares acquired through the exercise of rights or the receipt of a share dividend resulting in fractional share holdings.

(4) A state trust company may not lend, sell, or otherwise transfer assets of a fiduciary account for which a state trust company has investment discretion to itself or any of its directors, officers, managers, or employees, or to affiliates of the state trust company or any of their directors, officers, managers, or employees, or to individuals or organizations with whom there exists an interest that might affect the exercise of the best judgment of the state trust company, unless:

(a) The transaction is authorized by other applicable law;

(b) Legal counsel advises the state trust company in writing that the state trust company has incurred, in its fiduciary capacity, a contingent or potential liability, in which case the state trust company, upon the sale or transfer of assets, shall reimburse the fiduciary account in cash at the greater of book or market value of the assets;

(c) In the case of a collective investment fund, the state trust company purchases for its own account any defaulted investment held by the fund if, in the judgment of the state trust company, the cost of segregating the investment is excessive in light of the market value of the investment: PROVIDED, That the state trust company purchases the defaulted investment at the greater of market value or the sum of cost and accrued unpaid interest; or

(d) Required in writing by the director.

(5) Notwithstanding any other provision of this section, a state trust company may not lend to any of its directors, officers, managers, or employees any funds held in trust, except with respect to employee benefit plans in accordance with the exemptions found in section 408 of the employee retirement income security act of 1974, 29 U.S.C. Sec. 1108.

(6) A state trust company may make a loan to a fiduciary account and may hold a security interest in assets of the account if the transaction is fair to the account and is not prohibited by applicable law.

(7) A state trust company may sell assets between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law.

(8) A state trust company may make a loan between any of its fiduciary accounts if the transaction is fair to both accounts and is not prohibited by applicable law. [2019 c 389 § 44; 2014 c 37 § 365.]

30B.24.030 Compliance with fiduciary activities standards equivalent to that of national banks—Statement of principles of trust management—Management of third-party risk. (1) Unless the director shall otherwise set forth by rule, a state trust company and, to the extent applicable, its affiliates, and their respective directors, officers, managers, employees, and agents, shall comply with such federal regulations applicable to the fiduciary activities of a federally insured state bank.

(2) The requirements of subsection (1) of this section, as applicable to a state trust company, shall be at least partially contained in the state trust company's written statement of principles of trust management, the contents of which shall be subject to examination and approval by the department, and upon which the department may further examine a state trust company as to whether it is in compliance with such statement.

(3) A state trust company and, to the extent applicable, its affiliate, shall comply with standards for prudent management of third-party risk under applicable law or as the director may otherwise adopt by rule or by a written interpretive statement including, without limitation, management of third-party risk pursuant to RCW 30B.24.060. [2019 c 389 § 42.]

30B.24.040 Written statement of principles of trust management required—Contents. (1) The board of directors of a state trust company shall adopt a written statement of

principles of trust management at its first organizational meeting or at a meeting of the board called for that purpose, which it must annually reaffirm by written vote, whether or not such statement is sought to be amended.

(2) The statement of principles of trust management shall set forth the minimum requirements for sound fiduciary management in the operation of a state trust company. Such minimum requirements shall provide for sound fiduciary practices in the operation of a state trust company and provide safeguards for the protection of fiduciary beneficiaries, principals of agency relationships, creditors, stockholders, and the public, and shall provide for:

(a) Involvement by the board of directors in providing for the establishment and continuing fiduciary operations;

(b) Operation of fiduciary activities separate and apart from every other activity of the state trust company, with trust assets separated from other assets owned by the state trust company, and the assets of each trust account separated from the assets of every other trust account; and

(c) Maintenance of separate books and records for the fiduciary business in sufficient detail to properly reflect all fiduciary activities.

(3) The statement of principles of trust management shall provide that the board of directors, by resolution included in its minutes:

(a) Designate a competent and qualified officer or manager to be responsible for and administer the fiduciary activities of the state trust company;

(b) Define such officer's or manager's duties;

(c) Name a trust committee consisting of at least three directors to be responsible for and supervise the fiduciary activities of the state trust company or state banking institution, which shall include, if feasible, one or more directors who are not officers of the state trust company or state banking institution;

(d) Receive reports from such trust committee and record actions taken in its minutes;

(e) Review the examination reports of the state trust company by the department or other applicable financial services regulatory authority having jurisdiction over the state trust company; and

(f) Record all actions taken in its minutes.

(4) Nothing in this section is intended to prohibit the board of directors from authorizing itself to act as the trust committee, or from authorizing itself to appoint additional committees and officers to oversee account administration and the operation of the state trust company and its fiduciary activities.

(5) When such statement provides for delegating duties to a subcommittee or officers, the statement shall indicate that the board and the trust committee remain responsible for the oversight of all trust company and fiduciary activities. Such statement shall also reflect that sufficient reporting and monitoring procedures are required to fulfill this responsibility.

(6) The statement of principles of trust management shall provide that the trust committee:

(a) Meet at least quarterly, and more frequently if considered necessary and prudent to fulfill its supervisory responsibilities;

(b) Approve and document:

(i) The opening of all new fiduciary accounts;

(ii) Purchases and sales of, and changes in, trust assets; and

(iii) The closing of trust and agency relationship accounts;

(c) Provide for a comprehensive review of all new accounts, for which the state trust company or trust department has investment responsibility, promptly following acceptance;

(d) Provide for a review of each fiduciary and agency account, including collective investment funds, at least once during each calendar year, the scope, frequency, and level of review of which should be addressed in appropriate written policies that give consideration to the state trust company's fiduciary responsibilities, type and size of account, and other relevant factors, including coverage of both administration of the account and suitability of the account's investments, distinguishing as between the scope and components of discretionary and nondiscretionary reviews;

(e) Keep comprehensive minutes of meetings held and actions taken; and

(f) Make periodic reports to the board of directors of its actions.

(7) The statement of principles of trust management shall also require:

(a) Comprehensive written policies which address all important areas of the state trust company's fiduciary activities;

(b) Competent legal counsel to advise trust officers and the trust committee on legal matters pertaining to fiduciary activities;

(c) Adequate internal controls, including appropriate controls over fiduciary assets; and

(d) An adequate annual audit of all fiduciary activities by an internal or external auditor, as required by the department, the findings of which, including actions taken as a result of the audit, must be recorded in its minutes.

(8) Notwithstanding subsection (7)(d) of this section, the statement of principles of trust management may provide that, if a state trust company adopts a continuous audit process instead of performing annual audits, such audits may be performed, on an activity-by-activity basis, at intervals commensurate with the level of risk associated with that activity. In such case, the statement must reflect that audit intervals are to be supported and reassessed regularly to ensure appropriateness, given the current risk and volume of the activity. [2019 c 389 § 43.]

30B.24.050 Call report. (1) A state trust company shall file no later than forty-five days after the end of each calendar quarter a statement of its financial condition and a summary of the condition of its fiduciary accounts, known as a call report, in a form and content as prescribed by the director by rule or written policy from which at least ninety days' advance written notice has been given.

(2) Unless otherwise established by rule, such call report shall be deemed confidential examination information and shall be subject to RCW 30A.04.075. [2019 c 389 § 45.]

30B.24.060 Compliance with the bank secrecy act—Management of third-party risk—Cybersecurity—Examination. (1) A state trust institution and its affiliate or third-party service provider, if applicable, shall comply with the federal financial recordkeeping and reporting of currency and foreign transactions act, 31 U.S.C. Sec. 5311 et seq., also known as the bank secrecy act, and with associated federal regulations including, without limitation, any requirements under 31 C.F.R. Part 103.

(2) A state trust institution and its affiliate or third-party service provider, if applicable, shall maintain the federal standards for safeguarding customer information, required pursuant to Title V of the federal Gramm-Leach-Bliley act, P.L. 106-10, 113 Stat. 1338, as amended, and shall comply with applicable federal and state laws and rules related to cybersecurity, or written interpretive statement of the department to which the state trust institution, affiliate, or third-party service provider has been furnished notice.

(3) A state trust company shall be subject to examination by the department for compliance with subsections (1) and (2) of this section. An affiliate of a state trust company may be subject to examination for compliance with subsections (1) and (2) of this section upon notice to the state trust company and to the applicable affiliate. A third-party service provider may be subject to direct examination in relation to compliance with subsections (1) and (2) of this section as may be required pursuant to RCW 30B.10.045 (3) and (4). [2019 c 389 § 46.]

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—Authority of director.
30B.38.030	Requirement of notice.
30B.38.040	Notice of approval or denial by director.
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.38.100	State trust company operating in another state—Approval of director.

30B.38.005 Trust business at a trust office. (1) An out-of-state trust institution that meets the requirements of this chapter is not required to maintain a physical trust office in Washington state.

(2) An out-of-state trust institution that does not operate a trust office in Washington state and that meets the requirements of this chapter may establish and maintain a new trust office in Washington state.

(3) As used in this chapter, "doing business in Washington state," with reference to an out-of-state trust institution, means purposely availing oneself of regularly transacting trust business with the public in Washington state, or otherwise seeking to regularly transact trust business with the public in Washington state by means of solicitation, which the director may so determine if all or part of the administration of any trust or other agreement to conduct trust business is

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administered or sought to be administered in Washington state, or if a trust or other trust business agreement, with the assent of the out-of-state trust institution, specifies Washington state as the situs of the trust or situs of the tangible or intangible property covered by the trust business agreement. [2019 c 389 § 47; 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—Authority of director. (1) Except as authorized by federal law, by another law of Washington state, or by a written finding of the director waiving some or all of the requirements of this section in the interest of facilitating financial interstate commerce, an out-of-state trust institution shall not be permitted to engage in a trust business in Washington state unless the director has approved an out-of-state trust institution's written application to do business in Washington state in accordance with this section.

(2) In order for the director to approve an out-of-state trust institution's written application to do business in Washington state, the director must determine in writing that all of the following conditions have been met, or otherwise in his or her discretion waive or modify one or more of such conditions in writing:

(a) That the out-of-state trust institution is authorized to do business in its home state, is in good standing with its home state regulator, is not subject to a supervisory directive, corrective action order, conservatorship, or the equivalent, from its home state regulator, and has not had its authority to do business in its home state, any other state, or a foreign jurisdiction suspended or revoked;

(b) That a state trust company with the same activities as the out-of-state trust institution would be able to do business in the home state of the out-of-state trust institution on the same or more favorable terms as in Washington state, when considering such home state's laws and its supervision, examination, or other safety and soundness oversight of a state trust company seeking to do business in such home state;

(c) That the out-of-state trust institution has secured or will secure as of the effective date of the department's certificate of authority a fidelity bond or equivalent insurance coverage for directors, officers, managers, or employees satisfactory to the director; and

(d) That as long as the out-of-state trust institution maintains a trust office or otherwise conducts trust business in Washington state, it will comply with all laws of Washington state that are applicable to an out-of-state trust institution doing business in Washington state.

(3) The director shall deny an application filed under this section or suspend or revoke the approval of an application, if the director finds that the standards of organization, supervision, examination, or other safety and soundness oversight of the out-of-state trust institution do not conform to the standards for a state trust company under this title. In considering

the standards of organization, supervision, examination, or other safety and soundness oversight of the out-of-state trust institution, the director may also consider the laws of the state in which the applicant is organized.

(4) In implementing this section, the director may cooperate with trust institution regulators in other states and may share with such regulators the information received in the administration of this chapter.

(5) The director may enter into supervisory agreements with out-of-state trust institutions or their regulators to prescribe the applicable laws and rules governing the powers and authorities of out-of-state trust institutions seeking to or doing business in Washington state. Such agreements may address, but are not limited to, corporate governance and operational matters. Such agreements may resolve any conflict of laws and further specify the manner in which examination, supervision, and application processes must be coordinated between the home state regulator and host state regulator.

(6) 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 Washington state will not threaten the safety and soundness of trust institutions in Washington state and serves the convenience and needs of Washington state consumers. [2019 c 389 § 48; 2014 c 37 § 368.]

30B.38.030 Requirement of notice. An out-of-state trust institution desiring to engage in trust business in Washington 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 Washington state, accompanied by a written application containing:

(1) Satisfactory 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 Washington state;

(3) Evidence of compliance with the requirements of the director set forth in RCW 30B.38.020 or a request for waiver of certain requirements of RCW 30B.38.020 satisfactory to the director; and

(4) A filing fee, if any, as prescribed by the director under authority of RCW 30A.04.070. [2019 c 389 § 49; 2014 c 37 § 369.]

30B.38.040 Notice of approval or denial by director.

(1) The director must, within sixty days after receiving a complete written application under RCW 30B.38.030, including any waiver request, notify the home state regulator and the out-of-state trust institution of the director's approval or denial of the written application or waiver request, including any other conditions for approval that the director may require.

(2) The sixty-day period of review 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 Washington state only on prior written approval by the director. [2019 c 389 § 50; 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 chapter 30B.10 RCW, the director may determine an out-of-state trust institution engaging in trust business in Washington state, or its affiliate, is in violation of any provision of this title or is operating in an unsafe and unsound manner.

(2) The director shall have the authority to take all such enforcement actions against an out-of-state trust institution or its affiliate as he or she is empowered to take under chapter 30B.10 RCW, including but not limited to issuing an order temporarily or permanently prohibiting the out-of-state trust institution or its affiliate from engaging in trust business in Washington 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 Washington state does not meet the requirements for engaging in trust business in Washington 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 pursuant to RCW 30B.10.180 an emergency order without advance notice or opportunity for hearing, subject to the right of the out-of-state trust institution or, as applicable, its affiliate, 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 or its affiliate and, to the extent practicable, will consult and cooperate with the home state regulator in pursuing and resolving such enforcement action. [2019 c 389 § 51; 2014 c 37 § 373.]

30B.38.080 Notice of subsequent merger, closing, etc. Each out-of-state trust institution that maintains an office in Washington state or otherwise conducts trust business in Washington 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, as determined by the definition of "control" set forth in RCW 30B.53.005;

(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 Washington state. [2019 c 389 § 52; 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 Washington 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, in the opinion of the director, subject to 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. [2019 c 389 § 54; 2014 c 37 § 375.]

30B.38.100 State trust company operating in another state—Approval of director. (1) Upon written approval of the director, a state trust company may conduct the business of a trust company in a host state, subject to the authority, requirements, and restrictions of the host state, or as otherwise directed by a cooperative agreement between the department and the host state.

(2) The director may enter into a cooperative agreement with the host state regulator of the host state in which a state trust company is permitted to and conducts the business of a trust company and may permit the host state regulator to periodically examine the affairs of the state trust company in the host state.

(3) The director may rely upon the examination of the host state regulator in lieu of the department itself conducting an examination of the state trust company's conduct in the host state. [2019 c 389 § 53.]

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—Notice.
30B.44A.030	Examination and reports.
30B.44A.040	Unclaimed property and moneys.
30B.44A.050	Sale and transfer of property—Conditions for sale without shareholder approval.
30B.44A.060	Procedures for voluntary liquidation.
30B.44A.070	Naming of successor trustee upon dissolution of state trust company—Contingency for director as statutory custodian.
30B.44A.080	Cancellation of state trust company's certificate of authority.

30B.44A.005 Required vote of shareholders. A state trust company may go into voluntary liquidation and be closed, and may surrender its certificate of authority and franchise as a corporation or limited liability company of Washington state by the affirmative votes of its shareholders owning two-thirds of its shares. [2019 c 389 § 55; 2014 c 37 § 376.]

30B.44A.010 Corporate procedure. (1) Shareholder action to liquidate a state trust company shall be taken at a meeting of the shareholders duly called and noticed as pro-

vided for in Title 23B RCW, if the state trust company is a corporation, and as provided in chapter 25.15 RCW, if the state trust company is a limited liability company.

(2) If the shareholders shall, by the required vote, elect to liquidate the state trust company, a copy of all proceedings of the meeting at which such action shall have been taken, verified by the oath of the president or manager and the secretary, shall be transmitted to the director for approval. [2019 c 389 § 56; 2014 c 37 § 377.]

30B.44A.020 Authority to liquidate—Notice. (1) If the director approves the liquidation, the director shall issue to the state trust company written notice of approval for such purpose.

(2) Such approval shall be deemed granted unless the director issues a written determination, no later than sixty days from notice by the state trust company to voluntarily liquidate, that adequate provision has not been made to satisfy all allowable creditors and further provide for successor trustees or other disposition of all trust assets under management.

(3) If the director has made such a determination within the time set forth in subsection (2) of this section, the director is authorized to take possession of the state trust company and its assets and business and liquidate it in the manner provided for in chapter 30B.44B RCW.

(4) If the director approves the voluntary liquidation of a state trust company under this chapter, the state trust company shall provide notice to creditors and the public of voluntary dissolution in the manner provided for in Title 23B RCW, if the state trust company is a corporation, and chapter 25.15 RCW, if the state trust company is a limited liability company. [2019 c 389 § 57; 2014 c 37 § 378.]

30B.44A.030 Examination and reports. While a state trust company is in process of voluntary liquidation under this chapter, it is subject to examination by the director and shall continue to furnish to the director such reports as required of a state trust company. [2019 c 389 § 58; 2014 c 37 § 379.]

30B.44A.040 Unclaimed property and moneys. (1) All unclaimed property remaining in the possession of a state trust company that has been voluntarily liquidated according to this chapter is subject to the provisions of chapter 11.08 RCW, except to the extent set forth in this section.

(2) Any funds, less outstanding fees and assessments owed to the director under RCW 30A.04.070, payment of allowable third-party claims, and disposition of fiduciary assets in compliance with this title, which remain uncalled for and unpaid at the conclusion of the state trust company's voluntary liquidation, shall be transmitted to the director and shall be deposited by him or her in a bank to the director's credit in trust for the benefit of any persons entitled thereto, and shall be paid by the director to such persons upon receipt of evidence, reasonably satisfactory to the director, of such persons' rights to such funds.

(3) All moneys so deposited remaining unclaimed for two years after deposit shall escheat to the state for the benefit of the state financial literacy and education programs as authorized by RCW 43.320.150 and administered by the

department or, in the absence of such programs, as otherwise directed by the state treasurer.

(4) It shall not be necessary to have the escheat adjudged in a suit or action. [2019 c 389 § 60; 2014 c 37 § 380.]

30B.44A.050 Sale and transfer of property—Conditions for sale without shareholder approval. (1) Any state trust company may sell and transfer to any other trust institution 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 shareholders.

(2) A copy of the minutes of any meeting at which such action is taken, together with a copy of the asset purchase agreement, shall be filed with the director.

(3) Notwithstanding any other provision of this title, 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 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.

(4) 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.

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

(6) This section does not affect the director's authority to take action under state law. [2019 c 389 § 62; 2014 c 37 § 381.]

30B.44A.060 Procedures for voluntary liquidation. Except as set forth in this chapter to the contrary, the procedures for voluntary liquidation of a state trust company shall be consistent with Title 23B RCW, if the state trust company is a corporation, and chapter 25.15 RCW, if the state trust company is a limited liability company. [2019 c 389 § 59.]

30B.44A.070 Naming of successor trustee upon dissolution of state trust company—Contingency for director as statutory custodian. (1) In the event of a voluntary dissolution of a trust company pursuant to this chapter, the provisions of RCW 11.98.039 (1), (2), and (3) shall apply, if applicable, to the selection of a successor trustee, subject to the director's option to approve a successor trustee as part of the director's approval of a voluntary liquidation under RCW 30B.44A.020.

(2) If, however, RCW 11.98.039(4) is applicable but a trust beneficiary, trustor, if alive, or trustee does not petition the superior court for appointment of successor trustee within

thirty days of the last publication of notice of the voluntary dissolution of the trust company pursuant to RCW 30B.44A.020, then the director may:

(a) Appoint himself or herself as a custodian of any affected trust until such time as the superior court makes a determination of successor trustee; or

(b) At his or her option, bring before the superior court a petition for appointment of a successor trustee, other than an employee or independent contractor of the department, pursuant to chapter 11.96A RCW.

(3) In no event may the director or any employee or independent contractor of the department serve as a successor trustee under chapter 11.98 RCW or as a receiver of trust assets under chapter 7.60 RCW. [2019 c 389 § 61.]

30B.44A.080 Cancellation of state trust company's certificate of authority. Whenever voluntary liquidation is approved by the director or the sale and transfer of the assets of any state trust company is approved by the director pursuant to this chapter, a certified copy of such approval, filed in the office of the secretary of state, shall authorize the cancellation of the certificate of authority of such state trust company, subject, however, to its continued existence, as either a general corporation under Title 23B RCW or a general limited liability company under chapter 25.15 RCW. [2019 c 389 § 63.]

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.030	Possession of trust assets and company assets and property with the director—Bar against attachment proceedings.
30B.44B.040	Director's right to take possession may be contested.
30B.44B.050	Powers and duties of director—Prohibition against liens.
30B.44B.060	Notice to creditors—Claims.
30B.44B.070	Executory contract or unexpired lease—Permitted actions by director.
30B.44B.080	Inventory—List of claims.
30B.44B.090	Objections to approved claims.
30B.44B.100	Temporary receiver—Prohibited except in emergency.
30B.44B.110	Preferences prohibited—Penalty.
30B.44B.120	Expense of liquidation—Priority for director's expenses.
30B.44B.130	Liquidation after claims are paid.
30B.44B.140	Disposition of unclaimed personal property.
30B.44B.150	Disposition of unclaimed personal property—Final notice—Sale.
30B.44B.160	Disposition of unclaimed personal property—Monetary funds.
30B.44B.170	Destruction of records after liquidation.
30B.44B.180	Reopening—Conditions.

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;

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(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.]

30B.44B.030 Possession of trust assets and company assets and property with the director—Bar against attachment proceedings. The taking of possession of any state trust company by the director pursuant to RCW 30B.44B.005 or 30B.44B.010 is sufficient to place all of the state trust company's fiduciary assets in the custody of the director and all of the nonfiduciary assets and property of every nature in the director's possession and bar all attachment proceedings. [2019 c 389 § 64.]

30B.44B.040 Director's right to take possession may be contested. (1) Within ten days after the director takes possession of a state trust company pursuant to RCW 30B.44B.005, the state trust company may serve a notice upon the director to appear before the superior court of the county where the headquarters of the state trust company is located and at a time to be fixed by the court, which shall not be less than five nor more than fifteen days from the date of the service of such notice, to show cause why the director's action taking possession of the state trust company should not be affirmed.

(2) Upon the return day of such notice, or such further day as the matter may be continued to, the court shall sum-

marily hear the show-cause petition and shall dismiss it, if the court finds that possession of the state trust company was taken by the director in good faith and for cause. If, however, the court finds that no cause existed for taking possession of the state trust company, the court shall require the director to restore the state trust company to possession of its assets and enjoin the director from further interference with the state trust company without cause. [2019 c 389 § 65.]

30B.44B.050 Powers and duties of director—Prohibition against liens. (1) Upon issuance of an order taking possession of a state trust company pursuant to RCW 30B.44B.005 or 30B.44B.010, the director must:

(a) Take custody of the assets of the state trust company and preserve, administer, and liquidate the business and assets of the state trust company as statutory liquidation agent;

(b) Furnish written notice:

(i) To all persons having possession of any assets of the state trust company; and

(ii) To beneficiaries, trustors, if alive, and appointed advisers in relation to trust assets that were under management by the state trust company as of the date and time that the director took possession of the state trust company, to the extent that the state trust company has not given prior notice to such beneficiaries or trustors, if alive, pursuant to RCW 11.98.039, or to such appointed advisers;

(c) Make provision as custodian under authority of this chapter for the preservation of the trust or other fiduciary assets of the state trust company while they are in the department's custody; and

(d) Upon notice from a trustor or beneficiary, or the like, of a trust agreement or other fiduciary contract directing the department to transfer the trust or other fiduciary assets of the state trust company, or as otherwise provided for by the terms of a trust agreement or other fiduciary contract, by Title 11 RCW, or by court order, make provision as custodian under this chapter for the transfer of trust or other fiduciary assets from the department's custody to applicable third parties.

(2) No person knowing of the taking of such possession by the director shall have a lien or charge for any payment advanced or cleared or liability incurred against any of the assets of the state trust company or any trust assets under management.

(3) With the approval of the superior court of the county in which the headquarters of the state trust company was located, the director may sell, compound, or compromise bad or doubtful debts, and upon such terms as the court shall direct, the director may borrow, mortgage, pledge, or sell all or any part of the real estate and personal property of the state trust company. The director shall deliver to each purchaser or lender an appropriate deed, mortgage, agreement of pledge, or other instrument of title or security. If real estate is situated outside of the county where the headquarters of the state trust company was located, a certified copy of the orders authorizing and confirming the sale or mortgage shall be filed for record in the county in which such property is situated.

(4) The director may appoint special assistants and other necessary agents to assist in the administration and liquidation of the state trust company, a certificate of such appoint-

ment to be filed with the clerk of the county where the headquarters of the state trust company was located.

(5) Except for a special assistant who is an employee of the department, the director shall require such special assistant or agent to give a surety company bond, conditioned as the director shall provide, the premium of which shall be paid out of the assets of the state trust company.

(6) The director may also request legal assistance from the Washington attorney general in such administration and liquidation; provided, however, that with permission of the Washington attorney general, the director may employ an attorney in private practice to perform such delegated functions. [2019 c 389 § 66.]

30B.44B.060 Notice to creditors—Claims. (1) The director shall publish on the department's public web site and also once a week for four consecutive weeks in a newspaper of general circulation, which the director shall select, a notice requiring all persons having claims against the dissolved state trust company to make proof of claim to the department as specified in the notice not later than ninety days from the date of the first publication of such notice.

(2) The director shall mail similar notices to all persons whose names appeared as creditors upon the books of the state trust company as of the date and time of the director taking possession pursuant to RCW 30B.44B.005 or 30B.44B.010.

(3) The director may approve or reject any claims, but shall serve notice of rejection upon the claimant by mail or personally. A declaration of service of such notice, signed under penalty of perjury, shall be deemed a rebuttable presumption that notice has been given pursuant to this section.

(4) No action shall be brought on any claim after ninety days from the date of service of notice of rejection.

(5) After the expiration of the time fixed in the notice, the director shall have no power to accept any claim.

(6) Any claim that has not been filed with the department as required by this section is barred as a matter of law. [2019 c 389 § 67.]

30B.44B.070 Executory contract or unexpired lease—Permitted actions by director. Upon issuance of an order taking possession of a state trust company, the director may assume or reject any executory contract or unexpired lease of the state trust company upon written notice to the parties to such contract. [2019 c 389 § 68.]

30B.44B.080 Inventory—List of claims. (1) Upon taking possession of the dissolved state trust company, the director shall make an inventory of the nonfiduciary assets in duplicate, filing one with the department and one in the office of the superior court clerk.

(2) Upon the expiration of the time fixed for the presentation of claims, the director shall make a duplicate list of claims presented, segregating those approved and those rejected, and file this list with the clerk of the superior court. [2019 c 389 § 69.]

30B.44B.090 Objections to approved claims. Objection may be made by any interested person to any claim approved by the director, which objection shall be deter-

mined by the superior court upon notice to the claimant and objector as the superior court shall prescribe. [2019 c 389 § 70.]

30B.44B.100 Temporary receiver—Prohibited except in emergency. (1) A receiver shall not be appointed by any court for any state trust company, nor shall any assignment of any state trust company for the benefit of creditors be valid, except that, in addition to the director's authority to take possession of a state trust company pursuant to RCW 30B.44B.005 or 30B.44B.010, the superior court otherwise having jurisdiction may in case of imminent necessity appoint a temporary receiver to take possession of and preserve the assets of such state trust company.

(2) Immediately upon appointment of a person as temporary receiver, the clerk of the superior court shall notify the director in writing of such appointment and the director shall then take possession of the state trust company, as in case of insolvency, and the temporary receiver shall, upon demand of the director, surrender to the director possession of the state trust company and all assets which shall have come into the possession of such temporary receiver.

(3) The director shall in due course pay such temporary receiver out of the assets of the state trust company. [2019 c 389 § 71.]

30B.44B.110 Preferences prohibited—Penalty. (1) Any transfer of its property or assets by a state trust company, made (a) in contemplation of insolvency or after it shall have become insolvent, (b) within ninety days before the date the director takes possession of such state trust company, and (c) with a view to the preference of one creditor over another or to prevent the equal distribution of its property and assets among its creditors, shall be void.

(2) Every director, officer, or employee of a state trust company making any such transfer of assets is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2019 c 389 § 72.]

30B.44B.120 Expense of liquidation—Priority for director's expenses. (1) All expenses incurred by the director in taking possession, administering, and resolving any state trust company dissolved pursuant to this chapter, including the expenses of assistants or agents and reasonable fees for any attorney who may be employed in connection with such administration and resolution, and the reasonable compensation of any special assistant or agent placed in charge of such dissolved state trust company, shall be a priority charge upon the assets of the dissolved state trust company and shall be senior to any approved third-party claims.

(2) Such charges for expenses as set forth in subsection (1) of this section shall be fixed by the director, subject to the approval of the superior court. [2019 c 389 § 73.]

30B.44B.130 Liquidation after claims are paid. When all proper claims of creditors, excluding shareholders, have been paid, as well as all expenses of administration and liquidation, and proper provision has been made for unclaimed or unpaid property and dividends, and assets still remain in the director's possession, the director shall furnish written notice to all shareholders of record of the state trust

company, as of the date and time the director took possession of the state trust company pursuant to RCW 30B.44B.005 or 30B.44B.010, of the existence of any remaining funds according to each shareholder's proportional beneficial interest in the state trust company. [2019 c 389 § 74.]

30B.44B.140 Disposition of unclaimed personal property. (1) If, at the conclusion of the liquidation of a state trust company, there remains unclaimed personal property, other than monetary deposit accounts, which had previously been left with it for safekeeping, including unclaimed trust assets, such property shall be inventoried by the director or his or her special assistant or agent and segregated and identified by the name and last known address of the person who appears on the books of the state trust company, as of the date and time of its closure, as being entitled to the property.

(2) Upon receiving possession of such unclaimed personal property, the director shall hold it for safekeeping. The liquidated state trust company, its directors, officers, managers, managing principals, and shareholders, and the director's special assistant or agent, if any, shall be relieved of responsibility and liability for the property so delivered to and received by the director.

(3) The director shall then send to each person who appears on the books and records of the liquidated state trust company as having the right to such property, at his or her last known address, a notice that the property listed will be held in his or her name for a period of not less than one year.

(4) At any time after the mailing of such notice, and before the expiration of one year, such person may require the delivery of the property so held, by properly identifying himself or herself and offering evidence of his or her right to such property, to the satisfaction of the director. The director may condition delivery of such property upon prior payment to the director of all storage costs and reasonable costs associated with such delivery. [2019 c 389 § 75.]

30B.44B.150 Disposition of unclaimed personal property—Final notice—Sale. (1) After the expiration of one year from the time of giving notice under RCW 30B.44B.140(3), the director shall issue and serve by mail a final notice stating that one year has elapsed since the sending of the notice referred to in RCW 30B.44B.140(3), and that the director will sell all the property or articles of value set out in the notice, at a specified time and place, not less than thirty days after the time of the final notice. Unless the person shall, on or before such time and to the satisfaction of the director, claim the property, identify himself or herself, offer evidence of his or her right to such property, and remit payment to the director of all storage costs and reasonable costs associated with delivery to such person, the director may sell all the property or articles of value listed in the notice, at public auction, at the time and place stated in the final notice: PROVIDED, That a notice of the time and place of such sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the headquarters of the state trust company was located.

(2) In addition to subsection (1) of this section, any such property held by the director, the owner of which is not known, may be sold at public auction after it has been held by the director for one year: PROVIDED, That a notice of the

time and place of sale has been published once within ten days prior to the sale in a newspaper of general circulation in the county where the headquarters of the state trust company was located. [2019 c 389 § 76.]

30B.44B.160 Disposition of unclaimed personal property—Monetary funds. (1) Any monetary funds, including funds obtained from sale of personal property at auction pursuant to this section, remaining unclaimed and unpaid in the possession of the director for six months after the superior court's order of final distribution, shall be deposited by the director in a bank to his or her credit, in trust for the benefit of the persons entitled to such funds and subject to the supervision of the superior court.

(2) Such monetary funds shall be paid by the director to the entitled persons upon receipt of satisfactory evidence of their right to such funds.

(3) All moneys so deposited remaining unclaimed for one year after deposit shall escheat to the state for the benefit of the state financial literacy and education programs as authorized by RCW 43.320.150 and administered by the department, or, in the absence of such programs, as otherwise directed by the state treasurer.

(4) It shall not be necessary to have the escheat adjudged in a suit or action. [2019 c 389 § 77.]

30B.44B.170 Destruction of records after liquidation. (1) Where any records of the state trust company have been taken over and are in the possession of the director in connection with the involuntary liquidation of a state trust company, the director may, in his or her discretion at any time after an order of final liquidation, or equivalent, by the superior court, destroy any of such records which may appear to the director to be obsolete or unnecessary for future reference as part of the liquidation and as files of the department.

(2) Such records are exempt from public disclosure, consistent with RCW 42.56.400(6), 30A.04.075, and 30B.04.060. [2019 c 389 § 78.]

30B.44B.180 Reopening—Conditions. (1) Notwithstanding any other provision of this chapter, the director may, at any time within ninety days after taking possession of a state trust company under RCW 30B.44B.005 or 30B.44B.010, permit such state trust company to reopen upon such terms and conditions as the director shall prescribe, if he or she has determined that:

(a) Sufficient remedy has been made of the state trust company's impairment and delinquencies; and

(b) It is in the best interest of trustors, beneficiaries, creditors, shareholders, and the general public that the state trust company be reopened rather than be liquidated.

(2) Before being permitted to reopen pursuant to this section, a state trust company shall pay all of the outstanding fees, assessment, and expenses of the director as provided for in this title. [2019 c 389 § 79.]

Chapter 30B.46 RCW

STATE TRUST COMPANIES—SUPERVISORY DIRECTION AND CONSERVATORSHIP

Sections

30B.46.003	Definitions.
30B.46.020	Scope of chapter—Corrective action measures.
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30B.46.040	Supervisory directive or corrective action order—Appointment of representative.
30B.46.050	Supervisory directive or corrective action order—Restrictions on operations—Other requirements.
30B.46.060	Supervisory directive or corrective action order—Conservator.
30B.46.070	Costs as charge against assets.
30B.46.080	Request for review of action—Stay of action—Orders subject to review.
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30B.46.100	Duration of conservator's term—Rehabilitated state trust company—Management.
30B.46.110	Plenary authority of director—Flexibility in use of remedies.
30B.46.120	Rules.

30B.46.003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Corrective action measures" refers collectively to supervisory agreements, memoranda of understanding, supervisory directives, corrective action orders, and orders of conservatorship.

(2) "Corrective action order" means a cease and desist order, consent order, order compelling action, or order of conservatorship, as prescribed by this chapter.

(3) "Exceeded its powers" includes, without limitation, the following circumstances:

(a) If a state trust company has engaged in unauthorized trust activity;

(b) If a state trust company has refused to permit examination of its books, papers, accounts, records, or affairs by the director, assistant director, or examiners; or

(c) If a state trust company has neglected or refused to observe an order of the director including, without limitation, an order to make good, within the time prescribed, any capital deficiency.

(4) "Order of conservatorship" means an order specifically authorized under this chapter for the appointment for a conservatory of a state trust company.

(5) "Supervisory agreement" or "memorandum of understanding" means a supervisory directive in which a state trust company has given its prior consent.

(6) "Supervisory directive" means a supervisory directive in which the state trust company has not given its prior consent.

(7) "Unsafe condition" shall mean and include, but not be limited to, any one or more of the following circumstances:

(a) If a state trust company is less than adequately capitalized as determined by the director;

(b) If a state trust company violates the applicable provisions of this title or any other law or regulation applicable to a state trust company in a manner that results or is likely to result in a significant increase in the state trust company's legal or operational risk;

(c) If a state trust company conducts a fraudulent or questionable practice in the conduct of its business that

endangers its reputation, beneficiaries, shareholders, or trustors, or threatens its solvency;

(d) If a state trust company conducts its business in an unsafe or unsound manner;

(e) If a state trust company engages in unauthorized trust activity;

(f) If a state trust company violates any conditions of its certificate of authority or any agreement entered with the director; or

(g) If a state trust company willfully fails to carry out any authorized instruction or direction of the director. [2019 c 389 § 80.]

30B.46.020 Scope of chapter—Corrective action measures. (1) The purpose of this chapter is to provide expeditious methods for the department to exercise proper supervision over the safety and soundness of state trust companies in the interest of Washington state's fiduciary industry and the general public. To that end, this chapter prescribes a series of progressive corrective action measures available to the director, as necessary and in connection with the exercise of his or her examination authority, the ultimate object of which is to restore a state trust company to a state of safe and sound condition and practices and to prevent, if possible, involuntary dissolution of the state trust company under chapter 30B.44B RCW.

(2) In order of progression, these corrective action measures include:

(a) The supervisory directive, which may be issued with the consent of a state trust company as a supervisory agreement or memorandum of understanding or without the state trust company's consent;

(b) The corrective action order, which may be issued with or without the consent of a state trust company; and

(c) The order of conservatorship, which may be issued with or without the consent of a state trust company.

(3) The director may issue and impose upon a state trust company, in lieu of or in addition to his or her authority to issue and serve a notice and statement of charges pursuant to chapter 30B.10 RCW, the following:

(a) A supervisory agreement or memorandum of understanding;

(b) A supervisory directive without the state trust company's consent;

(c) A corrective action order, with or without its consent; and

(d) An order of conservatorship, with or without its consent.

(4) A supervisory agreement or memorandum of understanding, or corrective action order or order of conservatorship consented to by a state trust company, shall not be subject to review except upon a claim by the state trust company or other person with standing under RCW 34.05.530, made in good faith, that the terms and conditions of the supervisory agreement or memorandum of understanding, corrective action order, or order of conservatorship exceed the authority of the director under this title and that consent to the supervisory agreement or memorandum of understanding was unreasonably coerced.

(5) A supervisory directive issued and imposed without the consent of the state trust company shall not be subject to

review except by petition for judicial review in the manner provided by the Washington administrative procedure act, RCW 34.05.510 through 34.05.598, inclusive.

(6) A corrective action order or order of conservatorship issued and imposed against a state trust company without its consent shall be deemed an emergency order under RCW 30B.10.180, subject only to judicial review as permitted by RCW 30B.10.180.

(7) No provision in this title shall preclude the director from issuing a corrective action order without having issued a supervisory directive, or issuing an order of conservatorship without having issued a supervisory directive or corrective action order.

(8) No provision in this title shall preclude the director from issuing an order for involuntary dissolution of a state trust company without first having issued corrective action measures if:

(a) Pursuant to RCW 30B.44B.005, the director has determined there is no reasonable likelihood that a state trust company can be restored to a safe and sound condition in the foreseeable future; or

(b) The state trust company gives its consent pursuant to RCW 30B.44B.010. [2019 c 389 § 81.]

30B.46.030 Supervisory directive. (1) If, upon examination or investigation, 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, without the director's supervisory directive, harmful to the public or to its beneficiaries, shareholders, or trustors, then the director may either negotiate and enter into a supervisory agreement or memorandum of understanding with the state trust company, or issue and deliver a supervisory directive or corrective action order without its consent, the contents of which shall contain:

(a) Notice to the state trust company of the director's supervisory determination; and

(b) A written list and description of the requirements necessary to abate the director's determination.

(2) If placed under a supervisory directive, with or without its consent, the state trust company shall comply with the director's lawful requirements as contained in the supervisory directive and within such time as provided in the supervisory directive.

(3) If the state trust company fails to comply with the supervisory directive within the time provided, the director may issue and deliver to the state trust company, with or without its consent, a corrective action order or an order of conservatorship. [2019 c 389 § 82.]

30B.46.040 Supervisory directive or corrective action order—Appointment of representative. During the period of a supervisory directive or corrective action order, the director may appoint a representative to supervise the state trust company. [2019 c 389 § 83.]

30B.46.050 Supervisory directive or corrective action order—Restrictions on operations—Other requirements. A supervisory directive or corrective action order may provide that the state trust company not do any of the following during the period of supervisory direction,

without the prior approval of the director or the appointed representative:

- (1) Dispose of, convey, or encumber any of its assets;
- (2) Acquire new trust assets under management;
- (3) Dispose of existing trust assets under management;
- (4) Withdraw any of its own funds from bank accounts;
- (5) Lend any of its funds;
- (6) Invest any of its funds;
- (7) Transfer any of its property;
- (8) Incur any debt, obligation, or liability;
- (9) Change the composition of the board of directors or management; or
- (10) Any other written restriction or requirement as determined by the director. [2019 c 389 § 84.]

30B.46.060 Supervisory directive or corrective action order—Conservator. (1) If the director determines that a state trust company has failed to comply with the lawful requirements imposed by such supervisory directive or corrective action order, the director may by order, with or without consent of the state trust company, appoint a conservator for the state trust company, 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 necessitated such order of conservatorship, as the director may specify in the order.

(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 such state trust company, including claims or causes of actions belonging to or which may be asserted by such 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 be filed by or against such state trust company that are deemed by the conservator to be necessary to protect all of the interested parties for a property affected thereby.

(4) The director, an assistant director or other officer of the department, or an independent contractor appointed by the director may be appointed to serve as conservator.

(5) If, after issuance of the order of conservatorship, the director determines, after consultation with the conservator, that the state trust company is in an unsafe and unsound condition and ought not to continue business, the director may proceed to give advance notice to and take possession of the state trust company for involuntary liquidation pursuant to chapter 30B.44B RCW.

(6) The director, in his or her capacity as a conservator, or any other person appointed as conservator by the director, pursuant to this chapter is immune from criminal, civil, and administrative liability for any act done in good faith in the performance of the duties of conservator. [2019 c 389 § 85.]

30B.46.070 Costs as charge against assets. (1) All costs incident to supervisory direction and the conservatorship shall be fixed and determined by the director and shall be

a charge against the assets of the state trust company to be allowed and paid as the director may determine.

(2) A member of the board of directors of a state trust company or, in the case of a limited liability trust company, a managing participant, may, pursuant to notice and adjudication under chapter 30B.10 RCW, be found liable for such costs incurred that have not been recouped by the director out of the assets of the state trust company. [2019 c 389 § 86.]

30B.46.080 Request for review of action—Stay of action—Orders subject to review. (1) During the period of the supervisory direction or period of conservatorship, as applicable, the state trust company may request the director to review an action taken or proposed to be taken by a representative under a supervisory directive or by the conservator, specifying that the action complained of is believed not to be in the best interest of the state trust company.

(2) A request made under subsection (1) of this section shall stay the action of the representative or conservator pending review of such action by the director.

(3) An order by the director pursuant to this section, following the review of an action or proposed action of the representative or conservator, shall be subject to judicial review in accordance with RCW 30B.10.180. [2019 c 389 § 87.]

30B.46.090 Suit against state trust company or conservator—Where brought—Suit by conservator. (1) A suit filed against a state trust company or its conservator, after the issuance of an order by the director placing such state trust company in conservatorship and while such order is in effect, shall be brought in the superior court of Thurston county and not elsewhere.

(2) The conservator appointed for such state trust company may file suit in any superior court or other court of competent jurisdiction against any person for the purpose of preserving, protecting, or recovering any asset or property of such state trust company, including claims or causes of action belonging to or which may be asserted by such state trust company. [2019 c 389 § 88.]

30B.46.100 Duration of conservator's term—Rehabilitated state trust company—Management. (1) The conservator shall serve for such time as is necessary to accomplish the purposes of the conservatorship as intended by this chapter.

(2) If rehabilitated, the rehabilitated state trust company shall be returned to preexisting management or new management under such conditions as are reasonable and necessary to prevent recurrence of the condition which occasioned the conservatorship. [2019 c 389 § 89.]

30B.46.110 Plenary authority of director—Flexibility in use of remedies. (1) If the director determines to act under authority of this chapter, the sequence of his or her acts and proceedings shall be as set forth in this chapter.

(2) However, the director may, in the exercise of broad administrative discretion, proceed in lieu of this chapter and pursuant to other authority including, without limitation, notice and adjudication under chapter 30B.10 RCW or by means of seeking a direct judicial remedy in superior court. [2019 c 389 § 90.]

30B.46.120 Rules. The director is empowered to adopt and promulgate such rules as may be further necessary, if at all, for the implementation of this chapter and its purposes. [2019 c 389 § 91.]

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 shareholders—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.53.090	Acquisition of control of state trust company—Notice and application—Registration statement—Violations—Penalties.
30B.53.100	Acquisition of control of state trust company—Disapproval by director—Change of officers.

30B.53.002 Applicability of chapter. This chapter applies to any merger or change of control in which a state trust company is a party. [2019 c 389 § 92; 2014 c 37 § 387.]

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

(1) "Acquiring person" means a person acquiring or seeking to acquire control of a state trust company, directly or indirectly.

(2) "Control," "controls," "controlled," and "controlling" mean:

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

(3) "Merger" includes consolidation.

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

(5) "Resulting trust company" means the trust company resulting from a merger. [2019 c 389 § 93; 2014 c 37 § 388.]

30B.53.010 Approval by director—Required. Upon approval by the director consistent with this chapter, merging trust companies, one of which is a state trust company, may

be merged to result in a resulting trust company. [2019 c 389 § 96; 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 shareholders; (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 shareholders 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. [2019 c 389 § 97; 2014 c 37 § 390.]

30B.53.030 Approval by shareholders—Voting—Notice. (1) To be effective, a merger that is to result in a trust company must be approved by the shareholders of each merging trust company by a vote of two-thirds of the outstanding voting shares 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 shareholders 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 shareholder of record of each merging trust company at the address on the books of the shareholder'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 shares. The notice shall state that dissenting shareholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [2019 c 389 § 98; 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 shareholders of each merging trust company approving it, certified by the trust company's president or manager and the 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. [2019 c 389 § 99; 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 share certificates. The value of the shares shall be determined, as of the date of the shareholders' 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 shareholders' 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. [2019 c 389 § 100; 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.]

30B.53.090 Acquisition of control of state trust company—Notice and application—Registration statement—Violations—Penalties. (1) An acquiring person shall not acquire control of a state trust company until thirty days after filing with the director a written notice of and application for change of control containing the following information, plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of shareholders, trustors, beneficiaries, and the public interest:

(a) The identity and trust and other business experience of each acquiring person by whom or on whose behalf acquisition is to be made, including the identity and experience of:

(i) The officers, managers, and directors of the acquiring person; and

(ii) Any proposed new officers, managers, or directors for the state trust company in the event of a change of control of the state trust company;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any portion of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the state trust company, to sell its assets, to merge it with another trust institution, or to make any other major change in its business or corporate structure for management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring person, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their shares to be used in connection with the proposed acquisition.

(2) When an entity is required to file an application under this section, the director may require that information required by subsection (1)(a), (b), and (f) of this section be given for each officer, manager, and director of such entity, and each person who is directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the entity.

(3) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933, 48 Stat. 74, 15 U.S.C. Sec. 77(a), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, 48 Stat. 881, 15 U.S.C. Sec. 78(a), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

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(4) Any acquiring person shall also deliver a copy of any notice and application required by this section to the state trust company proposed to be acquired within two days after the notice and application is filed with the director.

(5) Any acquisition of control in violation of this section shall be ineffective and void.

(6) Any person who willfully or intentionally violates this section or any rule adopted pursuant to this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues. [2019 c 389 § 94.]

30B.53.100 Acquisition of control of state trust company—Disapproval by director—Change of officers. (1) The director may disapprove the acquisition of a state trust company within thirty days after the filing of a complete application pursuant to RCW 30B.53.090 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring person might jeopardize the financial stability of the state trust company or might prejudice the interests of the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(b) The plan or proposal of the acquiring person to liquidate the state trust company, to sell its assets or transfer its fiduciary assets, to merge it with any person, or to make any other major change in its business or corporate structure or management that is not fair and reasonable to the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(c) The fiduciary and other business experience and integrity of any acquiring person who would control the operation of the state trust company indicates that approval would not be in the interest of the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring person; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the state trust company involved. Such findings and order shall not be disclosed to any other person and shall not be subject to public disclosure under chapter 42.56 RCW unless the findings or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change of control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, managers, or any director, which occurs in the following

twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer, managers, or directors. [2019 c 389 § 95.]

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 pri-

vate 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 July 28, 2019, obtained approval from the director under authority of Title 30 RCW, as it existed before January 5, 2015, or under authority of this title, as it existed prior to July 28, 2019, to engage in trust business in Washington state and has continuously since the date of such approval held itself out to the public as engaging in trust business in Washington 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 July 28, 2019, in the form of a certificate of authority, declaration of reciprocity between Washington 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 Washington 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 July 28, 2019, is presumed to have:

- (a) Complied with chapter 30B.38 RCW; and
- (b) Continuously held itself out to the public as engaging in trust business in Washington state since the date of the director's approval. [2019 c 389 § 101; 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.]

