

CHAPTER.....

AN ACT relating to financial institutions; requiring a trust company or savings bank that assumes the role of custodian of an individual retirement account to provide certain notice to holders of the account under certain circumstances; revising the definition of the term “fiduciary” for the purposes of certain provisions relating to the business of a trust company; authorizing funds held in a fiduciary capacity by a savings bank to be swept to the deposit accounts of the savings bank under certain circumstances; imposing certain requirements on savings banks relating to funds in a fiduciary account administered by a savings bank that are awaiting investment or distribution; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law defines “fiduciary” for the purposes of certain provisions governing the business of a trust company to include a servicer or administrator of individual retirement accounts. (NRS 669.045) **Section 1.3** of this bill excludes from the definition of “fiduciary” a trust company or a savings bank that acts as a custodian of individual retirement accounts or an affiliate of such a trust company or savings bank that provides services to the trust company or savings bank.

Existing law authorizes a savings bank to engage in the business of a trust company and imposes certain requirements and restrictions on a savings bank that engages in such trust company business. (NRS 673.228) **Section 2** of this bill makes various changes to reflect the addition of the provisions of **section 1.3** which provide that a savings bank acting as a custodian of an individual retirement account does not act as a fiduciary.

Existing law prohibits funds held in a fiduciary capacity by a savings bank from being used in the conduct of its business, but allows such funds to be invested in the deposit accounts maintained at the savings bank if a trust or custodial retirement plan does not prohibit the investment. (NRS 673.228) **Section 2** revises these provisions to instead authorize funds held in a fiduciary capacity by a savings bank to be invested in or swept to the deposit accounts of a savings bank if the instrument governing the trust retirement plan or other fiduciary account does not prohibit the practice.

Existing federal regulations set forth certain requirements for a national bank with respect to funds in a fiduciary account administered by the national bank that are awaiting investment or distribution. (12 C.F.R. § 9.10) **Section 2** sets forth certain requirements for a savings bank with respect to funds in a fiduciary account administered by the savings bank that are awaiting investment or distribution which are similar to the requirements for national banks set forth in existing federal regulations.

Sections 1 and 1.7 of this bill require a trust company or savings bank that assumes the role of custodian of an individual retirement account from an affiliate of the trust company or savings bank, as applicable, or from another trust company or savings bank or affiliate thereof, to provide to each holder of the account certain notice of the assumption of the role of custodian of the account.



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

Section 1. Chapter 669 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a trust company or savings bank assumes the role of custodian for any individual retirement account within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), from:

(a) An affiliate of the trust company or savings bank, as applicable;

(b) Another trust company or savings bank; or

(c) An affiliate of another trust company or savings bank, ↪ the trust company or savings bank, as applicable, which is assuming the role of custodian shall, in the manner required pursuant to the terms of the documentation of the individual retirement account and any requirements set forth in applicable federal law, provide each holder of the account with notice that the trust company or savings bank, as applicable, is assuming the role of custodian of the account.

2. As used in this section, “savings bank” has the meaning ascribed to it in NRS 673.0317.

Sec. 1.3. NRS 669.045 is hereby amended to read as follows:

669.045 1. “Fiduciary” means a trustee, executor, administrator, guardian of an estate, personal representative, conservator, assignee for the benefit of creditors, receiver, depository or person that receives on deposit money or property from a public administrator or a person employed or contracted with pursuant to NRS 253.125, as applicable, under any provision of this chapter or from another fiduciary.

2. As used in this section, “administrator” ~~includes~~ :

(a) Includes servicers or administrators of individual retirement accounts within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), where the servicer or administrator holds itself out to the public for performance of such services and holds or maintains an ownership interest in the servicing rights of such accounts, or possesses or controls any of the assets of such accounts, including cash.

(b) Does not include a trust company or savings bank that acts as a custodian for individual retirement accounts within the meaning of section 408(a) of the Internal Revenue Code of 1986,



26 U.S.C. § 408(a), or an affiliate of such a trust company or savings bank that provides services to the trust company or savings bank.

Sec. 1.7. Chapter 673 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a trust company or savings bank assumes the role of custodian for any individual retirement account within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. § 408(a), from:

(a) An affiliate of the trust company or savings bank, as applicable;

(b) Another trust company or savings bank; or

(c) An affiliate of another trust company or savings bank, ↪ the trust company or savings bank, as applicable, which is assuming the role of custodian shall, in the manner required pursuant to the terms of the documentation of the individual retirement account and any requirements set forth in applicable federal law, provide each holder of the account with notice that the trust company or savings bank, as applicable, is assuming the role of custodian of the account.

2. As used in this section, "trust company" has the meaning ascribed to it in NRS 669.070.

Sec. 2. NRS 673.228 is hereby amended to read as follows:

673.228 1. A savings bank shall have the powers, privileges and authorities to engage in trust company business, including engaging in *fiduciary or* custodial activities and establishing common trust funds, either directly or indirectly through a subsidiary, that any state bank, foreign bank, foreign savings bank, national bank or federal savings bank may exercise, subject to the requirements and conditions for engaging in such business of a trust company set forth in this section.

2. Before engaging in trust company business, a savings bank shall apply to the Commissioner on such form as he or she shall determine and pay the same fee as required for a state bank to engage in trust company business. In considering such an application, the Commissioner shall determine whether:

(a) The management and personnel of the savings bank are qualified to conduct trust company business;

(b) Trust company business will be adequately conducted in compliance with the law; and

(c) The financial and managerial resources of the savings bank are sufficient to support the conduct of trust company business.



3. A savings bank subscribing to trustee and custodial power authorized by this section shall be required to segregate all funds held in ~~[such]~~ a fiduciary *or custodial* capacity from the general assets of the savings bank and keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of this section.

4. If individual records are kept of each self-employed individual retirement plan, all funds held in such trust or custodial capacity by the savings bank may be commingled for appropriate purposes of investment.

5. No funds held in a fiduciary capacity by a savings bank may be used by the savings bank in the conduct of its business, although such funds may be invested in *or swept to* the deposit accounts of the savings bank if the *instrument governing the* trust, ~~[or custodial]~~ retirement plan *or other fiduciary account* does not prohibit the ~~[investment.] funds from being invested or swept as such.~~

6. *With respect to a fiduciary account for which a savings bank has investment discretion or discretion over distributions, the savings bank shall not allow funds awaiting investment or distribution to remain uninvested and undistributed any longer than is reasonable for the proper management of the fiduciary account and consistent with applicable law. With respect to a fiduciary account for which a savings bank has investment discretion, the savings bank shall obtain for funds awaiting investment or distribution a rate of return that is consistent with applicable law.*

7. *A savings bank may deposit funds of a fiduciary account that are awaiting investment or distribution in the commercial, savings or another department of the savings bank, unless prohibited by applicable law. To the extent that the funds are not insured by the Federal Deposit Insurance Corporation, the savings bank shall set aside collateral as security, under the control of appropriate fiduciary officers and employees, in accordance with subsection 8. The market value of the collateral set aside must at all times equal or exceed the amount of the uninsured fiduciary funds.*

8. *A savings bank may satisfy the collateral requirement of subsection 7 with any of the following:*

(a) Direct obligations of the United States, or other obligations fully guaranteed by the United States as to principal and interest;

(b) Securities that qualify as eligible for investment by savings banks in this State under applicable law;



(c) *Readily marketable securities of the classes in which state banks, trust companies or other corporations exercising fiduciary powers are permitted to invest fiduciary funds under applicable state law;*

(d) *Surety bonds, to the extent that they provide adequate security, unless prohibited by applicable law; and*

(e) *Any other assets that qualify under applicable state law as appropriate security for deposits of fiduciary funds.*

9. *A savings bank, acting in its fiduciary capacity, may deposit funds of a fiduciary account that are awaiting investment or distribution with an affiliated insured depository institution, unless prohibited by applicable law. A savings bank may set aside collateral as security for a deposit by or with an affiliate of fiduciary funds awaiting investment or distribution, unless prohibited by applicable law.*

10. As used in this section [~~“business”~~]:

(a) *“Applicable law” means the laws of this State governing the fiduciary relationships of a savings bank, any applicable federal law governing such relationships, the terms of the instrument governing a fiduciary relationship or any court order pertaining to such a relationship.*

(b) *“Business of a trust company” or “trust company business” has the meaning ascribed to it in NRS 669.029.*

(c) *“Fiduciary account” means an account administered by a savings bank acting in a fiduciary capacity.*

(d) *“Fiduciary capacity” means:*

(1) *Trustee;*

(2) *Executor;*

(3) *Administrator;*

(4) *Registrar of stocks and bonds;*

(5) *Transfer agent;*

(6) *Guardian;*

(7) *Assignee;*

(8) *Receiver;*

(9) *Custodian under chapter 167 of NRS;*

(10) *Investment advisor, if the savings bank receives a fee for its investment advice;*

(11) *Any capacity in which the savings bank possesses investment discretion on behalf of another; or*

(12) *Any other similar capacity that the Commissioner authorizes.*

(e) *“Guardian” means a guardian or conservator of the estate of a minor, an incompetent person, an absent person or a person*



over whose estate a court has taken jurisdiction, other than under laws governing bankruptcy or insolvency.

(f) “Investment discretion” means, with respect to an account, the sole or shared authority, whether or not that authority is exercised, to determine what securities or other assets to purchase or sell on behalf of the account. A savings bank that delegates its authority over investments and a savings bank that receives delegated authority over investments are both deemed to have investment discretion.

