

HOUSE BILL NO. HB0060

Trust company amendments.

Sponsored by: Joint Minerals, Business & Economic
Development Interim Committee

A BILL

for

1 AN ACT relating to trust companies; providing procedures
 2 for the judicial dissolution or rehabilitation of a trust
 3 company; providing for the appointment of the banking
 4 commissioner as a receiver of an insolvent or unsafe trust
 5 company as specified; requiring trust companies to post
 6 sureties with the commissioner as specified; providing for
 7 the voluntary dissolution or reorganization of a trust
 8 company; providing procedures for the organization of trust
 9 companies as limited liability companies; providing for
 10 fees; creating a trust company resolution account;
 11 providing rulemaking authority; and providing for an
 12 effective date.

13

14 *Be It Enacted by the Legislature of the State of Wyoming:*

15

1 **Section 1.** W.S. 13-5-114 through 13-5-118 are created
2 to read:

3
4 **13-5-114. Order declaring trust company properly**
5 **wound up and dissolved.**

6
7 (a) Upon the completion of the liquidation of a trust
8 company pursuant to W.S. 13-5-113, the commissioner shall
9 petition the court for an order declaring the trust company
10 properly wound up and dissolved.

11
12 (b) After notice and hearing, as ordered by the
13 court, if any, the court shall enter an order declaring the
14 trust company wound up and dissolved. The order shall, to
15 the extent applicable, declare the following:

16
17 (i) The trust company has been properly wound
18 up;

19
20 (ii) All known assets of the trust company have
21 been distributed pursuant to W.S. 13-5-113;

22
23 (iii) The trust company is dissolved;

1

2 (iv) If there are known debts or liabilities,
3 describe the provision made for their payment, setting
4 forth all information necessary to enable the creditor or
5 other person to whom payment is to be made to appear and
6 claim payment of the debt or liability.

7

8 (c) The order shall confirm a plan by the
9 commissioner for the disposition or maintenance of any
10 remaining real or personal property or other trust company
11 assets. The plan shall include written notice to all known
12 owners or beneficiaries of the assets, to be sent by first
13 class mail to each individual's address as shown on the
14 records of the trust company.

15

16 (d) The court may enter additional orders and grant
17 further relief as it determines appropriate upon the
18 evidence submitted.

19

20 (e) Upon the issuance of the order declaring the
21 trust company dissolved, the existence of the trust company
22 as either a corporation or a limited liability company
23 shall cease, except for purposes of any necessary

1 additional winding up. The commissioner shall promptly file
2 a copy of the order, certified by the clerk of the court,
3 with the secretary of state.

4

5 **13-5-115. Surety bond; pledged investments;**
6 **investment income; bond or pledge increases; hearings.**

7

8 (a) Any trust company chartered under this chapter,
9 shall, before transacting any business, pledge or furnish a
10 surety bond to the commissioner to cover costs likely to be
11 incurred by the commissioner in a receivership or
12 liquidation of the trust company should it become unsafe or
13 unsound pursuant to W.S. 13-5-113. The amount of the
14 pledge or the surety bond shall be determined by the
15 commissioner in an amount sufficient to defray the costs of
16 a receivership or liquidation, but shall have a market
17 value of not less than one hundred thousand dollars
18 (\$100,000.00). In lieu of a bond, the trust company may
19 irrevocably pledge its capital account to the commissioner.
20 Any investments pledged to the commissioner shall be held
21 in a state or nationally chartered bank or savings and loan
22 association having a principal or branch office in this
23 state and all costs associated with pledging and holding

1 such investments are the responsibility of the trust
2 company.

3

4 (b) Investments pledged to the commissioner shall be
5 of the same nature and quality as those required for state
6 financial institutions in W.S. 9-4-805.

7

8 (c) Surety bonds shall run to the state of Wyoming,
9 and shall be approved under the terms and conditions
10 required by W.S. 9-4-804(b) and (c).

11

12 (d) The commissioner may promulgate rules pursuant to
13 W.S. 13-1-603 to establish additional investment guidelines
14 or investment options for purposes of the pledge or surety
15 bond required by this section.

16

17 (e) In the event of a receivership of a trust company
18 as provided in W.S. 13-5-113, the commissioner may, without
19 regard to priorities, preferences or adverse claims, reduce
20 the pledged investments to cash as soon as practicable with
21 court approval, and utilize the cash to defray the costs
22 associated with the receivership.

23

1 (f) Income from investments pledged under this
2 section shall be paid to the trust company unless the court
3 places the trust company in receivership.

4
5 (g) Upon evidence that the current bond or investment
6 pledge is insufficient, the commissioner may require any
7 trust company to increase its investment pledge or surety
8 by providing no less than thirty (30) days written notice
9 to the trust company. The trust company to which notice is
10 given may request a hearing in writing no more than thirty
11 (30) days after receiving notice of the proposed increase.
12 Any hearing before the commissioner shall be held pursuant
13 to the Wyoming Administrative Procedure Act.

14
15 **13-5-116. Voluntary dissolution of trust company;**
16 **liquidation; reorganization; application for dissolution;**
17 **filing fee; filing with secretary of state; revocation of**
18 **charter.**

19
20 (a) A trust company may voluntarily dissolve in the
21 manner provided herein. Voluntary dissolution shall be
22 accomplished by either liquidating the trust company or
23 reorganizing the trust company into a domestic or foreign

1 corporation, limited liability company, limited partnership
2 or limited liability partnership that does not engage in
3 any activity that is authorized only for a trust company.
4 Upon complete liquidation or completion of the
5 reorganization, the commissioner shall revoke the trust
6 company's charter and thereafter the company may not use
7 the word "trust" in its business name or in connection with
8 its business.

9

10 (b) A trust company seeking to dissolve its charter
11 either by liquidation or reorganization shall file an
12 application for dissolution with the commissioner
13 accompanied by a filing fee of one thousand five hundred
14 dollars (\$1,500.00) payable to the commissioner. The
15 application shall include a comprehensive plan for
16 dissolution setting forth the proposed disposition of all
17 assets and liabilities, in reasonable detail to effect a
18 liquidation or reorganization. The plan of dissolution
19 shall provide for the discharge or assumption of all of the
20 trust company's known and unknown claims and liabilities
21 and for the transfer of all of its responsibilities as a
22 trustee to a successor trustee or trustees. Additionally,
23 the application for dissolution shall include other

1 evidence, certifications, affidavits, documents or
2 information as the commissioner may require demonstrating
3 how assets and liabilities will be disposed, the timetable
4 for effecting disposition of the assets and liabilities and
5 the applicant's proposal for addressing any claims that are
6 asserted after the dissolution has been completed. The
7 commissioner shall examine the application for completeness
8 and compliance with the requirements of this section, the
9 business entity laws applicable to the required type of
10 dissolution and applicable rules and regulation. The
11 commissioner may conduct a special examination of the
12 applicant for purposes of evaluating the application.

13

14 (c) If the commissioner finds that the application is
15 incomplete, the commissioner shall return it for completion
16 not later than sixty (60) days after it is filed. If the
17 application is found to be complete by the commissioner,
18 not later than thirty (30) days after it is filed, the
19 commissioner shall approve or disapprove the application.
20 If the commissioner approves the application, the applicant
21 may proceed with the dissolution pursuant to the plan
22 outlined in the application, subject to any conditions the
23 commissioner may prescribe. If the applicant subsequently

1 determines that the plan of dissolution needs to be amended
2 to complete the dissolution, it shall file an amended plan
3 with the commissioner and obtain approval to proceed under
4 the amended plan. If the commissioner does not approve the
5 application or amended plan, the applicant may appeal the
6 decision to the board pursuant to the Wyoming
7 Administrative Procedure Act.

8

9 (d) Upon completion of all actions required under the
10 plan of dissolution and satisfaction of all conditions
11 prescribed by the commissioner, the applicant shall submit
12 a written report of its actions to the commissioner. The
13 report shall contain a certification made under oath that
14 the report is true and correct. Following receipt of the
15 report, the commissioner, no later than sixty (60) days
16 after the filing of the report, shall examine the trust
17 company to determine whether the commissioner is satisfied
18 that all required actions have been taken in accordance
19 with the plan of dissolution and any conditions prescribed
20 by the commissioner. If all requirements and conditions
21 have been met, the commissioner shall notify the applicant
22 in writing that the dissolution has been completed and
23 issue a certificate of dissolution. Upon receiving a

1 certificate of dissolution, the applicant shall surrender
2 its charter to the commissioner. The applicant shall then
3 file articles of dissolution and other documents required
4 by W.S. 17-16-1401 through 17-16-1440 for a corporation or
5 required by W.S. 17-29-701 through 17-29-708 for a limited
6 liability company, in the office of the secretary of state.
7 In the case of reorganization, the applicant shall also
8 file the documents required by the secretary of state to
9 finalize the reorganization.

10

11 (e) If the commissioner is not satisfied that all
12 required actions under the plan for dissolution or as
13 required by the commissioner have been taken, the
14 commissioner shall notify the applicant in writing what
15 additional actions shall be taken to be eligible for a
16 certificate of dissolution. The commissioner shall
17 establish a reasonable deadline for the submission of
18 evidence that the additional actions have been taken. The
19 commissioner may extend the deadline for good cause shown.
20 If the applicant fails to file a supplemental report
21 showing that the additional actions have been taken before
22 the deadline, or submits a report that is found not to be
23 satisfactory by the commissioner, the commissioner shall

1 notify the applicant in writing that its voluntary
2 dissolution is not approved, and the applicant may appeal
3 the decision to the board pursuant to the Wyoming
4 Administrative Procedure Act.

5

6 (f) The commissioner may adopt rules pursuant to W.S.
7 13-1-603 to carry out the requirements of this section.

8

9 **13-5-117. Failure to submit required report; fees;**
10 **regulations.**

11

12 (a) If a trust company fails to submit any report
13 required pursuant to this act or any regulation adopted
14 pursuant thereto within the prescribed period, the
15 commissioner may impose and collect a fee of not more than
16 twenty-five dollars (\$25.00) for each day the report is
17 overdue.

18

19 (b) The commissioner shall adopt regulations
20 establishing the amount of the fee imposed pursuant to this
21 section.

22

1 **13-5-118. Willful neglect to perform duties imposed**
2 **by law or failure to conform to material lawful requirement**
3 **made by commissioner; removal.**

4
5 (a) Each officer, director, manager, member, employee
6 or agent of a trust company, following written notice from
7 the commissioner sent by certified mail, is subject to
8 removal upon order of the commissioner if he knowingly or
9 willfully fails:

10
11 (i) To perform any duty required by this act or
12 other applicable law; or

13
14 (ii) To conform to any rule, regulation or
15 requirement of the commissioner.

16
17 **Section 2.** W.S. 13-5-101(a) and (b)(v), 13-5-102(b),
18 13-5-103(a), 13-5-104(a), 13-5-105, 13-5-110(a)(intro),
19 (i), by creating a new paragraph (vii) and by creating a
20 new subsection (b) and 13-5-113 are amended to read:

21
22 **13-5-101. Authority to organize; powers; limitations;**
23 **prohibitions; exemptions.**

1

2 (a) Trust companies may be organized under this act
3 as a corporation or a limited liability company to exercise
4 the powers permitted by subsection (b) of this section and
5 powers and rights granted to other corporations and limited
6 liability companies under general law except as provided by
7 this act.

8

9 (b) Each trust company may:

10

11 (v) Take oaths and execute affidavits by the
12 oath or affidavit of its: ~~president, vice president,~~
13 ~~secretary, assistant secretary, manager, trust officer or~~
14 ~~assistant trust officer;~~

15

16 (A) Corporate officers if the trust company
17 is organized as a corporation; or

18

19 (B) Managing members if the trust company
20 is organized as a limited liability company.

21

22 **13-5-102. Formation.**

23

1 (b) The person forming a trust company shall execute
2 articles of incorporation as provided by W.S. 13-2-202 or
3 articles of organization for a limited liability company.
4 These articles shall include the requirements contained in
5 W.S. 17-16-201 for corporations and W.S. 17-29-201 for
6 limited liability companies. The commissioner may
7 establish, by rule and regulation, other documents and
8 materials to be filed by a trust company.

9
10 **13-5-103. Application for charter; fee.**

11
12 (a) The incorporator shall apply to the ~~state banking~~
13 commissioner for a charter. The application shall be on
14 forms prescribed by the ~~state banking~~ board and shall
15 contain such information as required by rule and regulation
16 of the ~~state banking~~ board. The commissioner shall act upon
17 the application in accordance with the procedures specified
18 for acting upon an application to form a financial
19 institution provided in W.S. 13-2-207.

20
21 **13-5-104. Procedure for granting charter; failure to**
22 **open for business.**

23

1 (a) Upon receiving the articles of incorporation or
2 the articles of organization, the application for charter
3 and other information required, the ~~state banking~~
4 commissioner shall investigate and examine the proposed
5 trust company in accordance with procedures for the
6 commissioner to investigate and examine a financial
7 institution provided in W.S. 13-2-211(a).

8
9 **13-5-105. Capital stock required; statement.**

10
11 No trust company shall be incorporated or organized for any
12 of the purposes enumerated in this act or possess the
13 rights and franchises provided under this act unless it
14 shall have paid in capital stock of not less than five
15 hundred thousand dollars (\$500,000.00) for a corporation or
16 paid in contribution from its members of not less than five
17 hundred thousand dollars (\$500,000.00) for a limited
18 liability company. Before proceeding to transact business
19 under this act a sworn statement signed and sworn to by the
20 president and secretary of the corporation or managing
21 member or members of the limited liability company shall be
22 filed with the ~~state banking~~ commissioner to the effect

1 that the capital has been paid up in cash and all the
2 provisions of this act complied with.

3

4 **13-5-110. Powers of the commissioner.**

5

6 (a) In addition to other powers conferred by this
7 act, the ~~state banking~~ commissioner shall:

8

9 (i) Supervise and examine all trust companies
10 organized under the provisions of this act and all such
11 trust companies shall be subject to the laws of this state
12 governing banks and other financial institutions in all
13 cases where the laws do not conflict with the provisions of
14 this act. The commissioner or a duly appointed examiner
15 shall visit and examine each trust company as often as the
16 commissioner deems necessary and at least once every two
17 (2) years, with or without previous notice to the officers
18 or any other party interested in the trust company. All
19 trust companies shall file with the commissioner ~~the~~
20 ~~Federal Financial Institutions Examination Council Annual~~
21 ~~Report of trust assets for the company and~~ an annual report
22 of trust assets in a form prescribed by the commissioner,

1 an annual report of the financial condition of the company
2 and other reports as required by the commissioner;

3
4 (vii) On or before January 31 of each year, each
5 trust company shall compute and pay supervisory fees to the
6 commissioner based upon the total asset base of the trust
7 company as of the preceding December 31. Except as
8 provided in subsection (b) of this section, the supervisory
9 fees shall provide for the general administration of the
10 laws and regulations governing the trust company industry.
11 The fees shall be established by regulation of the
12 commissioner and shall be adjusted by regulations issued by
13 the commissioner to assure consistency with the cost of
14 supervision. Other fees assessed for administrative
15 services related to activities attributable to a specific
16 trust company shall be used to pay the costs of special
17 services rendered by or at the direction of the
18 commissioner and shall be recovered from the trust company
19 which required the special services.

20
21 (b) A trust company resolution fund account is
22 established. A portion of each supervisory fee paid
23 pursuant to paragraph (a)(vii) of this section shall be

1 paid to the resolution fund account and shall be used by
2 the commissioner in the event of an involuntary dissolution
3 of a trust company. The amount paid to the resolution fund
4 account shall be established by regulation of the
5 commissioner. All amounts paid shall be remitted to the
6 state treasurer and deposited and credited to the trust
7 company resolution fund account. Expenditures from the
8 account shall be made using warrants drawn by the state
9 auditor, upon vouchers issued and signed by the director of
10 the department of audit or commissioner. Funds from the
11 account shall be expended only to carry out the duties of
12 the commissioner in the involuntary dissolution of a trust
13 company.

14

15 **13-5-113. Insolvency; unsafe condition; receivership.**

16

17 (a) If the commissioner finds a deficiency in capital
18 or other unsafe or unsound condition of a trust company
19 that has not been remedied within the time prescribed under
20 an order of the commissioner issued pursuant to W.S.
21 13-10-201 through 13-10-209, or if the trust company is
22 insolvent, the commissioner ~~may~~ shall apply to the district
23 court, in the county in which the principal office of the

1 company is located, to be appointed receiver for the
2 liquidation or rehabilitation of the company. The expense
3 of the receivership shall be paid out of the assets of the
4 trust company.

5

6 (b) A trust company is insolvent when any of the
7 following conditions exist:

8

9 (i) When the actual cash market value of a trust
10 company's assets is less than its liabilities;

11

12 (ii) When a trust company fails to pay, in the
13 manner commonly accepted by business practices, its
14 obligations when due.

15

16 (c) A trust company is operating in an unsafe and
17 unsound condition when any of the following conditions
18 exist:

19

20 (i) A trust company fails to safely manage its
21 operations and provide fair and equitable services to its
22 trust customers;

23

1 (ii) It fails to effectively manage and monitor
2 its operational and financial risks.

3
4 (d) Title to all of the trust company's assets shall
5 vest in the commissioner upon appointment by the court
6 pursuant to subsection (a) of this section of the
7 commissioner as receiver, without the execution of any
8 instrument of conveyance, assignment, transfer or
9 endorsement.

10
11 (e) Subject to the approval of the appointing court,
12 as receiver, the commissioner shall have all of the
13 following powers:

14
15 (i) To take possession of all books, records of
16 account and assets of the trust company;

17
18 (ii) To collect debts, claims and judgments
19 belonging to the trust company and to take any other action
20 necessary to preserve and liquidate the assets of the trust
21 company;

22

1 (iii) To appoint a special assistant to take
2 charge of the affairs of the trust company. The special
3 assistant shall qualify, give bond, and receive
4 compensation in the same manner as the commissioner acting
5 as a receiver, but compensation for the special assistant
6 shall be paid by the trust company being liquidated or
7 rehabilitated;

8
9 (iv) To execute in the name of the trust company
10 any instrument necessary or proper to effectuate the
11 receiver's powers or perform its duties as receiver;

12
13 (v) To initiate, pursue, compromise and defend
14 litigation involving any right, claim, interest or
15 liability of the trust company;

16
17 (vi) To exercise all fiduciary functions of the
18 trust company as of the date of appointment as receiver;

19
20 (vii) To borrow money as necessary in the
21 liquidation of the trust company and to secure those
22 borrowings by the pledge or mortgage of assets of the trust
23 company;

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(viii) To sell any and all assets, to compromise any debt, claim, obligation or judgment due to the trust company, to discontinue any pending action or other proceeding and to sell or otherwise transfer all or any portion of the asset or liabilities of the trust company;

(ix) To establish ancillary receivership in any jurisdiction the receiver determines necessary;

(x) To distribute assets in accordance with court approval after notice to all claimants, beneficiaries, shareholders or members. Subject to the approval of the court, the receiver may make periodic and interim liquidating dividends or payments; and

(xi) To take any other action incident to the powers set forth above.

Section 3. W.S. 13-5-106 is repealed.

1 **Section 4.** This act is effective July 1, 2015.

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(END)