

1 SENATE BILL 137

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Stuart Ingle

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9  
10 AN ACT

11 RELATING TO FINANCIAL INSTITUTIONS; PROVIDING ADDITIONAL  
12 REQUIREMENTS FOR CERTIFICATES, MINIMUM CAPITAL, FIDELITY BONDS  
13 AND INSURANCE; CLARIFYING POWERS OF THE DIRECTOR; PROVIDING FOR  
14 INVESTIGATIONS AND INVESTIGATIVE FEES; PROVIDING FOR THE  
15 REORGANIZATION OF A TRUST COMPANY; PROVIDING PENALTIES;  
16 AMENDING AND REPEALING SECTIONS OF THE TRUST COMPANY ACT.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 58-9-2 NMSA 1978 (being Laws 1973,  
20 Chapter 191, Section 2, as amended) is amended to read:

21 "58-9-2. DEFINITIONS.--As used in the Trust Company Act:

22 A. [~~"commissioner" or~~] "director" means the  
23 director of the financial institutions division of the  
24 regulation and licensing department;

25 B. "trust business" means the holding out by a

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1 person, legal entity or corporation to the public at large by  
2 advertising, solicitation or other means that the person, legal  
3 entity or corporation is available to act as a fiduciary in  
4 this state or is accepting and undertaking to perform the  
5 duties of a fiduciary in the regular course of its business;

6 C. "trust company" means a corporation holding a  
7 certificate issued pursuant to the Trust Company Act;

8 D. "certificate" means a certificate of authority  
9 issued [~~under the provisions of~~] pursuant to the Trust Company  
10 Act to engage in trust business;

11 E. "fiduciary" means executor, administrator,  
12 conservator or trustee; [~~and~~]

13 F. "nonprofit corporation" means a nonprofit  
14 corporation as defined in the Nonprofit Corporation Act that  
15 [~~is funded by or contracts with a federal, state, county or~~  
16 ~~other governmental entity~~] was formed and is operating a pooled  
17 trust in compliance with the requirements of 42 U.S.C.

18 1396p(d)(4) to provide trust services for individuals who are  
19 disabled, and the nonprofit corporation is not otherwise  
20 engaged in the trust business. As used in this subsection,  
21 "disabled" has the meaning set forth in 42 U.S.C. 1382c(a)(3);  
22 and

23 G. "division" means the financial institutions  
24 division of the regulation and licensing department."

25 SECTION 2. Section 58-9-4 NMSA 1978 (being Laws 1973,

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1 Chapter 191, Section 4, as amended) is amended to read:

2 "58-9-4. CERTIFICATE REQUIRED--COMPLIANCE WITH STATE AND  
3 FEDERAL LAW--SEPARATION OF TRUST FUND AND INVESTMENTS.--

4 A. No person, legal entity or corporation shall  
5 engage in the trust business without first obtaining a  
6 certificate from the [~~commissioner~~] director; provided,  
7 however, that a bank having its principal office in this state  
8 or an out-of-state bank not having an established office in  
9 this state otherwise authorized under state or federal laws to  
10 engage in the trust business or a savings and loan association  
11 having its principal office in this state acting as trustee or  
12 custodian [~~under the provisions of~~] pursuant to Section  
13 58-10-35 NMSA 1978 may engage in [~~such~~] trust business to the  
14 extent permitted in that section without obtaining a  
15 certificate under the Trust Company Act.

16 B. A trust company shall conduct such business in  
17 compliance with all state and federal laws, and all rules  
18 promulgated pursuant to those laws, including the Trust Company  
19 Act, the Uniform Probate Code, the Uniform Prudent Investor Act  
20 and the Uniform Trust Code.

21 C. A trust company shall keep all trust funds and  
22 investments separate and apart from the assets of the trust  
23 company, and all investments made by the trust company as a  
24 fiduciary shall be designated so that the trust or estate to  
25 which such investment belongs is clearly identified."

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1           SECTION 3. Section 58-9-5 NMSA 1978 (being Laws 1973,  
2 Chapter 191, Section 5, as amended by Laws 2013, Chapter 88,  
3 Section 2 and by Laws 2013, Chapter 97, Section 2) is amended  
4 to read:

5           "58-9-5. APPLICATION FOR CERTIFICATE--FEE.--

6           A. An application for a certificate shall be in  
7 writing, in such form as the director prescribes, verified  
8 under oath and supported by such information, data and records  
9 as the director may require.

10           B. Each application for a certificate shall be  
11 accompanied by an application fee of one thousand dollars  
12 (\$1,000), made payable to the [~~financial institutions~~] division  
13 [~~of the regulation and licensing department~~]. No portion of  
14 the application fee shall be refunded.

15           C. An application for a certificate shall be  
16 accompanied by an oath sworn by each proposed member of the  
17 board of directors of the trust company stating that the board  
18 member will diligently and honestly administer the affairs of  
19 the trust company and will not knowingly violate or knowingly  
20 permit to be violated any state or federal laws or any rules  
21 promulgated pursuant to those laws, including the Trust Company  
22 Act, the Uniform Probate Code, the Uniform Prudent Investor Act  
23 or the Uniform Trust Code. The oath shall be in such form as  
24 the director prescribes and shall be certified by a notary  
25 public.

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1                   D. On and after July 1, 2018, any board member  
2 newly elected or appointed to the board of directors of a trust  
3 company certified under the Trust Company Act shall,  
4 immediately upon election to the board, swear and cause to be  
5 transferred to the director the oath of a trust company board  
6 member as set forth in Subsection C of this section."

7                   SECTION 4. Section 58-9-6 NMSA 1978 (being Laws 1973,  
8 Chapter 191, Section 6, as amended by Laws 2013, Chapter 88,  
9 Section 3 and by Laws 2013, Chapter 97, Section 3) is amended  
10 to read:

11                   "58-9-6. MINIMUM CAPITAL.--

12                   A. A certificate shall not be issued to an  
13 applicant for certification pursuant to the Trust Company Act  
14 having [~~a paid-up~~] capital of less than five hundred thousand  
15 dollars (\$500,000). [~~All trust companies that have been issued~~  
16 ~~certificates pursuant to the Trust Company Act as of December~~  
17 ~~31, 2012 shall meet the increased paid-up capital requirement~~  
18 ~~of five hundred thousand dollars (\$500,000) on or before~~  
19 ~~December 31, 2017.]~~

20                   B. The minimum capital requirement shall be waived  
21 for nonprofit corporations."

22                   SECTION 5. Section 58-9-7 NMSA 1978 (being Laws 1973,  
23 Chapter 191, Section 7) is amended to read:

24                   "58-9-7. FIDELITY BOND--INSURANCE REQUIRED--EVIDENCE OF  
25 FINANCIAL RESPONSIBILITY REQUIRED.--

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1           A. No corporation shall obtain a certificate  
2 without securing and filing with the ~~[commissioner]~~ director a  
3 ~~[surety]~~ fidelity bond ~~[or otherwise establishing to the~~  
4 ~~commissioner's satisfaction such corporation's financial~~  
5 ~~responsibility~~

6           ~~B. For a corporation organized and engaged in the~~  
7 ~~trust business prior to the effective date of the Trust Company~~  
8 ~~Act, the amount of the surety bond, if financial responsibility~~  
9 ~~is not otherwise established to the commissioner's~~  
10 ~~satisfaction, shall be not less than twenty-five percent of the~~  
11 ~~aggregate value of the property, money or other valuables held~~  
12 ~~in trust as of the first day of the month in which the~~  
13 ~~application for a certificate is filed.~~

14           ~~C. For a corporation not engaged in the trust~~  
15 ~~business prior to the effective date of the Trust Company Act,~~  
16 ~~the amount of the surety bond, if financial responsibility is~~  
17 ~~not otherwise established to the commissioner's satisfaction,~~  
18 ~~shall be one hundred thousand dollars (\$100,000)] in the~~  
19 ~~following amounts:~~

<u>Trust Assets</u>	<u>Fidelity Bond Amounts</u>
<u>\$3,000,000 or less</u>	<u>\$500,000</u>
<u>More than \$3,000,000 but not</u>	
<u>more than \$15,000,000</u>	<u>\$750,000</u>
<u>More than \$15,000,000 but not</u>	
<u>more than \$25,000,000</u>	<u>\$1,000,000</u>

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1	<u>More than \$25,000,000 but not</u>	
2	<u>more than \$50,000,000</u>	<u>\$1,500,000</u>
3	<u>More than \$50,000,000 but not</u>	
4	<u>more than \$75,000,000</u>	<u>\$2,000,000</u>
5	<u>More than \$75,000,000 but not</u>	
6	<u>more than \$100,000,000</u>	<u>\$2,750,000</u>
7	<u>More than \$100,000,000 but not</u>	
8	<u>more than \$500,000,000</u>	<u>\$3,500,000</u>
9	<u>More than \$500,000,000 but not</u>	
10	<u>more than \$1,000,000,000</u>	<u>\$5,000,000</u>
11	<u>More than \$1,000,000,000</u>	<u>\$5,000,000 plus</u>
12		<u>\$1,000,000 for every</u>
13		<u>\$100,000,000 over</u>
14		<u>\$1,000,000,000.</u>

15           B. A trust company shall file a signed copy of its  
16 fidelity bond with the director, and the fidelity bond shall  
17 remain a part of the division's records.

18           C. Every fidelity bond filed with the director by a  
19 trust company pursuant to Subsection A of this section shall  
20 contain a provision prohibiting the bond company from canceling  
21 such fidelity bond for failure to pay the premium unless the  
22 bond company files a written notice with the director at least  
23 ten days before canceling the fidelity bond. Every fidelity  
24 bond filed with the director by a trust company pursuant to  
25 Subsection A of this section shall contain a provision

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1 prohibiting the bond company from canceling such fidelity bond  
2 for any other reason unless the bond company files a written  
3 notice with the director at least thirty days before canceling  
4 the fidelity bond.

5 D. Except as provided in Subsection E of this  
6 section, a fidelity bond secured and filed pursuant to this  
7 section shall contain a deductible clause not to exceed fifteen  
8 percent of the face amount of the fidelity bond.

9 E. A trust company may submit a written request to  
10 the director for approval of a fidelity bond with a deductible  
11 clause in excess of fifteen percent of the face amount of the  
12 bond. Such written request must be submitted not less than  
13 ninety days prior to the expiration of any fidelity bond for  
14 the trust company previously filed with the director. If the  
15 director has not issued written approval for the trust company  
16 to secure and file a fidelity bond with a deductible clause in  
17 excess of fifteen percent within thirty days of the expiration  
18 of the trust company's prior fidelity bond, the request of the  
19 trust company shall be deemed denied.

20 ~~[D.]~~ F. On or before ~~[the first day of]~~ March 1 of  
21 each year beginning with the year ~~[1974]~~ 2019, every trust  
22 company shall increase or adjust its ~~[surety]~~ fidelity bond ~~[if~~  
23 ~~financial responsibility is not otherwise established to the~~  
24 ~~commissioner's satisfaction]~~ to an amount equal to ~~[twenty-five~~  
25 ~~percent of the aggregate value of the property, money or other~~

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1 ~~valuables held in trust as of the last day of the preceding~~  
2 ~~year if the amount of its surety bond is less than twenty-five~~  
3 ~~percent of the aggregate value of the property, money or other~~  
4 ~~valuables held in trust] the amount required pursuant to~~  
5 ~~Subsection A of this section.~~

6 ~~[E. In no event shall the amount of the surety~~  
7 ~~bond, if financial responsibility is not otherwise established~~  
8 ~~to the commissioner's satisfaction, be less than one hundred~~  
9 ~~thousand dollars (\$100,000) nor more than five hundred thousand~~  
10 ~~dollars (\$500,000).~~

11 ~~F.] G. The [surety] fidelity bond [or other~~  
12 ~~evidence of financial responsibility] required by this section~~  
13 ~~shall be for the benefit of:~~

14 (1) any person damaged by an act or acts of a  
15 trust company or its directors, officers or employees as a  
16 result of a violation of the provisions of, or any [regulation  
17 or] rule promulgated pursuant to, the Trust Company Act, the  
18 Uniform Probate Code, the Uniform Prudent Investor Act or the  
19 Uniform Trust Code;

20 (2) any person damaged by the negligence,  
21 fraud or embezzlement of a [~~certified~~] trust company or its  
22 directors, officers or employees; [~~and~~] or

23 (3) any person damaged by any other breach of  
24 trust of any [~~certified~~] trust company.

25 H. The amount of a fidelity bond required by this

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1 section may be reduced by the director for nonprofit  
2 corporations that have otherwise established financial  
3 responsibility to the director's satisfaction.

4 I. A reduction in the amount of a required fidelity  
5 bond approved by the director pursuant to Subsection H of this  
6 section shall be reviewed by the director on an annual basis,  
7 at which time the reduction may be terminated upon ninety days'  
8 written notice by the director to the nonprofit corporation.

9 ~~[G.]~~ J. The ~~[commissioner]~~ director shall revoke  
10 the certificate of any trust company ~~[which]~~ that fails to  
11 maintain a bond or to otherwise supply evidence of financial  
12 responsibility as required by this section.

13 K. The board of directors of a trust company shall  
14 acquire suitable insurance to protect the trust company against  
15 burglary, robbery, forgery, theft, fraud, embezzlement and  
16 other similar insurable losses to which the trust company may  
17 be exposed in the operation of the trust company.

18 L. The board of directors of a trust company shall  
19 procure errors and omissions insurance of at least five hundred  
20 thousand dollars (\$500,000).

21 M. At least once each year, the board of directors  
22 of a trust company shall review the insurance coverage as set  
23 forth in Subsections K and L of this section to determine the  
24 adequacy of coverage in relation to the exposure of the trust  
25 company. The minimum amount of insurance required pursuant to

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1 this section does not automatically represent adequate  
2 insurance coverage in relation to the exposure. The actions of  
3 the board of directors shall be recorded in the minutes of the  
4 board. Immediately after procuring the insurance as required  
5 by Subsections K and L of this section, the board of directors  
6 shall file copies of the insurance policies with the director.

7 N. The director may revoke the certificate of any  
8 trust company that fails to maintain insurance as required by  
9 Subsections K and L of this section.

10 O. A trust company may be determined by the  
11 director to have demonstrated a lack of financial  
12 responsibility when any of the following nonexclusive  
13 conditions exist:

14 (1) the actual cash market value of the trust  
15 company's assets is less than its liabilities; or

16 (2) the trust company fails to pay, in the  
17 manner commonly accepted by business practices, its obligations  
18 when due.

19 P. A trust company may be determined by the  
20 director to be in an unsafe and unsound condition when any one  
21 of the following nonexclusive conditions exist:

22 (1) the trust company fails to safely manage  
23 its operations;

24 (2) the trust company fails to provide  
25 services to its trust customers pursuant to the trust company's

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1 fiduciary duty; or

2 (3) the trust company fails to manage and  
3 monitor its operational and financial risks."

4 SECTION 6. Section 58-9-8 NMSA 1978 (being Laws 1973,  
5 Chapter 191, Section 8, as amended) is amended to read:

6 "58-9-8. PROCEDURE FOR GRANTING OR DENYING CERTIFICATE.--

7 A. Upon the filing of an application for a  
8 certificate, the director [~~of the financial institutions~~  
9 ~~division~~] shall make or cause to be made a careful  
10 investigation and examination and shall issue a certificate if  
11 [~~he~~] the director finds:

12 (1) that the persons who will serve as  
13 directors or officers, [~~other than directors and officers of~~  
14 ~~nonprofit corporations~~] insofar as those persons are known, are  
15 qualified to be fiduciaries by character and experience and  
16 that the financial status of the stockholders, directors and  
17 officers [~~other than directors and officers of nonprofit~~  
18 ~~corporations~~] is consistent with their responsibilities and  
19 duties as fiduciaries; [~~except that~~] for nonprofit  
20 corporations, [~~the~~] any employee responsible for trust  
21 management shall be qualified to be a fiduciary by character  
22 and experience;

23 (2) that the name of the proposed company is  
24 not deceptively similar to that of another trust company or  
25 bank or is not otherwise misleading;

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1 (3) that the capital and surplus are not less  
2 than the required minimum, except that this requirement shall  
3 not apply to nonprofit corporations; and

4 (4) that there is a need for trust facilities  
5 or additional trust facilities, as the case may be, in the  
6 community where the proposed trust company is to be located.

7 B. The director [~~of the financial institutions~~  
8 ~~division~~] may consider and inquire into such other facts and  
9 circumstances bearing on the proposed trust company and its  
10 relation to its locality as in [~~his~~] the director's opinion may  
11 be relevant.

12 C. The certificate may be granted or denied without  
13 hearing, but the director [~~of the financial institutions~~  
14 ~~division~~] may, and at the request of the applicant shall, fix a  
15 date for a hearing on the application. At the hearing, any  
16 person may be heard with reference to the facts to be  
17 investigated."

18 SECTION 7. Section 58-9-9 NMSA 1978 (being Laws 1973,  
19 Chapter 191, Section 9, as amended) is amended to read:

20 "58-9-9. POWERS OF DIRECTOR.--In addition to other powers  
21 conferred by the Trust Company Act, the director [~~of the~~  
22 ~~financial institutions division has power to~~] may:

23 A. examine the business and affairs of each trust  
24 company at least once each year and at such other times and to  
25 such extent as [~~he may deem~~] the director deems necessary or

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1 advisable. The expense of every examination shall be paid by  
2 the corporation examined, in such amount as the director  
3 certifies to be just and reasonable;

4 B. regulate the procedure and practice at hearings;

5 C. implement by order and ~~[regulation]~~ rule the  
6 ~~[provisions of the]~~ Trust Company Act; ~~[and]~~ in making orders  
7 and rules to implement the Trust Company Act, the director  
8 shall act in the interest of promoting and maintaining a sound  
9 trust company system, the security of assets and trust accounts  
10 and the protection of persons utilizing trust services;

11 D. obtain restraining orders and injunctions to  
12 prevent violation of and enforce compliance with the Trust  
13 Company Act, and orders and ~~[regulations issued]~~ rules  
14 promulgated pursuant to the ~~[provisions of the]~~ Trust Company  
15 Act ~~[In making orders and regulations to implement the Trust~~  
16 ~~Company Act, the director shall act in the interest of~~  
17 ~~promoting and maintaining a sound trust company system, the~~  
18 ~~security of assets and trust accounts and the protection of~~  
19 ~~persons utilizing trust services]~~, the Uniform Probate Code,  
20 the Uniform Prudent Investor Act and the Uniform Trust Code;

21 ~~[D.]~~ E. order any person or trust company to cease  
22 violating the Trust Company Act, orders and ~~[regulations~~  
23 ~~issued]~~ rules promulgated pursuant to the ~~[provisions of the]~~  
24 Trust Company Act, the Uniform Probate Code, the Uniform  
25 Prudent Investor Act or the Uniform Trust Code, or to cease

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1 engaging in breaches of trust. A copy of such orders shall be  
2 mailed to each director of the trust company involved;

3 ~~[E-]~~ F. suspend, after notice and hearing, any  
4 officer or director, or any employee of a nonprofit  
5 corporation, for fraud, embezzlement or failure to comply with  
6 the Trust Company Act or orders or ~~[regulations issued]~~ rules  
7 promulgated pursuant to the Trust Company Act ~~[or any provision~~  
8 ~~of that act]~~, the Uniform Probate Code, the Uniform Prudent  
9 Investor Act or the Uniform Trust Code; and

10 ~~[F-]~~ G. subpoena witnesses, compel their  
11 attendance, require the production of evidence, administer an  
12 oath and examine any person under oath in connection with any  
13 subject relating to a duty imposed upon or a power vested in  
14 the director."

15 **SECTION 8.** Section 58-9-10 NMSA 1978 (being Laws 1973,  
16 Chapter 191, Section 10, as amended by Laws 2013, Chapter 88,  
17 Section 4 and by Laws 2013, Chapter 97, Section 4) is amended  
18 to read:

19 "58-9-10. IMPAIRMENT OF CAPITAL--UNSAFE CONDITIONS--  
20 RECEIVERSHIP.--

21 A. If it appears to the director that the capital  
22 of a trust company is either reduced or impaired below [~~five~~  
23 ~~hundred thousand dollars (\$500,000)] the minimum capital  
24 requirements set forth in Section 58-9-6 NMSA 1978, except for  
25 nonprofit corporations, ~~[or the affairs of the company are in~~~~

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1 ~~an unsound condition~~] the director shall order the company to  
2 make good any deficit [~~or to remedy the unsafe condition of its~~  
3 ~~affairs~~] within sixty days of the date of the order and may  
4 restrict and regulate the operation of the trust business until  
5 the capital is restored.

6 B. If the deficiency in capital has not been made  
7 good [~~and the unsafe condition remedied~~] within the prescribed  
8 time, the director may apply to the district court in the  
9 county in which the principal office of the company is located  
10 to [~~be appointed~~] have a receiver appointed for the liquidation  
11 or rehabilitation of the company. The expense of the  
12 receivership shall be paid out of the assets of the trust  
13 company.

14 C. The director may investigate, upon complaint or  
15 otherwise, if it appears that a trust company is conducting  
16 business in an unsafe, unsound, financially irresponsible or  
17 injurious manner or in violation of the Trust Company Act, or  
18 the rules promulgated pursuant to that act, the Uniform Probate  
19 Code, the Uniform Prudent Investor Act or the Uniform Trust  
20 Code, or when it appears that any person is engaging in trust  
21 business without being certified pursuant to the Trust Company  
22 Act.

23 D. If it appears upon sufficient ground or evidence  
24 satisfactory to the director that a trust company has engaged  
25 in or is about to engage in any act or practice in violation of

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1 the Trust Company Act, or any rule or order pursuant to that  
2 act, or the Uniform Probate Code, the Uniform Prudent Investor  
3 Act or the Uniform Trust Code, to the extent that the security  
4 of the assets and trust accounts or the protection of persons  
5 utilizing the trust services have been or may be jeopardized,  
6 the director may summarily order the trust company to cease and  
7 desist from that act or practice, or the director may apply to  
8 the district court of the first judicial district of Santa Fe  
9 county to enjoin the trust company in engaging in the act or  
10 practice and to enforce compliance with the Trust Company Act,  
11 the Uniform Probate Code, the Uniform Prudent Investor Act or  
12 the Uniform Trust Code, or for any other appropriate equitable  
13 relief. Upon a proper showing, if a temporary restraining  
14 order, a preliminary injunction or a permanent injunction is  
15 granted, a receiver may be appointed for the defendant or  
16 defendant's assets, and the certification of the trust company  
17 may be canceled and such additional or other equitable remedies  
18 may be provided as the court deems appropriate. The director  
19 shall not be required to post a bond.

20 E. If an investigation pursuant to Subsection C of  
21 this section reveals that a trust company is conducting  
22 business in an unsafe, unsound or injurious manner, or in  
23 violation of the Trust Company Act or rules promulgated  
24 pursuant to that act, the Uniform Probate Code, the Uniform  
25 Prudent Investor Act or the Uniform Trust Code, or that any

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1 person is engaging in trust business without being certified  
2 pursuant to the Trust Company Act, the trust company or person  
3 investigated shall pay to the director an investigation fee at  
4 the rate of one hundred fifty dollars (\$150) per day or  
5 fraction of a day for each authorized representative engaged in  
6 the investigation."

7 SECTION 9. Section 58-9-11 NMSA 1978 (being Laws 1973,  
8 Chapter 191, Section 11) is amended to read:

9 "58-9-11. DISCONTINUING BUSINESS--REORGANIZATION--  
10 CONTINUING JURISDICTION.--

11 A. Whenever any corporation desires to discontinue  
12 doing a trust business and surrenders its certificate or if its  
13 certificate is suspended or revoked, the company shall  
14 [~~nevertheless~~] continue to be subject to the [~~provisions of~~  
15 ~~the~~] Trust Company Act for so long as it acts as a fiduciary  
16 with respect to any trust business previously undertaken.

17 B. A trust company seeking to relinquish its  
18 certificate by liquidation shall file an application for  
19 dissolution with the director. The application shall include a  
20 comprehensive plan for dissolution setting forth the proposed  
21 disposition of all assets and liabilities in reasonable detail  
22 to effect a liquidation. The plan of dissolution shall provide  
23 for the discharge or assumption of all the trust company's  
24 known and unknown claims and liabilities and for the transfer  
25 of all its responsibilities as a trustee to a successor trustee

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

14 C. A trust company seeking to reorganize, including  
15 any change in ownership of the corporation of ten percent or  
16 greater, shall file an application for reorganization with the  
17 director. The application shall include a comprehensive plan  
18 for reorganization setting forth the proposed disposition of  
19 all assets and liabilities in reasonable detail to effect a  
20 reorganization. The plan of reorganization shall provide for  
21 the assumption of all the trust company's known and unknown  
22 claims and liabilities and for the transfer of all its  
23 responsibilities as a trustee to a successor trustee or  
24 trustees. Additionally, the application for reorganization  
25 shall include other evidence, certifications, affidavits,

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1 documents or information as the director may require  
2 demonstrating how assets and liabilities will be treated and  
3 the trust company's proposal for addressing any claims that are  
4 asserted after the reorganization has been completed. The  
5 director shall examine the application for completeness and  
6 compliance with the requirements of this section, the business  
7 entity laws applicable to the required type of reorganization  
8 and applicable rules. The director may conduct a special  
9 examination of the trust company for purposes of evaluating the  
10 application."

11 SECTION 10. Section 58-9-12 NMSA 1978 (being Laws 1973,  
12 Chapter 191, Section 12) is amended to read:

13 "58-9-12. PENALTY FOR NONCOMPLIANCE.--

14 A. It ~~[shall be]~~ is unlawful for any corporation to  
15 carry on or conduct a trust company business or to advertise or  
16 hold itself out as being engaged in or doing a trust company  
17 business or to use in connection with its business the words  
18 "trust company" or words of similar import without first having  
19 complied with all the provisions of law relating to trust  
20 companies. All officers, directors or trustees of any  
21 corporation violating this section ~~[shall be]~~ are guilty of a  
22 misdemeanor and shall be punished by a fine not to exceed five  
23 thousand dollars (\$5,000) or imprisonment in the county jail  
24 for a definite term not exceeding one year or both ~~[such fine~~  
25 ~~and imprisonment]~~.

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underscoring material = new  
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B. Any person refusing or obstructing access to the director to any books, records or papers, refusing to furnish required information or hindering a full examination of the books, accounts, papers or finances of a trust company is guilty of a misdemeanor and shall be punished by a fine not to exceed five thousand dollars (\$5,000) or imprisonment in the county jail for a definite term not exceeding one year or both."

SECTION 11. REPEAL.--Section 58-9-13 NMSA 1978 (being Laws 1973, Chapter 191, Section 13) is repealed.

SECTION 12. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.