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AN ACT

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

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

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

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

A. "director" means the director of the financial  
institutions division of the regulation and licensing  
department;

B. "trust business" means the holding out by a  
person, legal entity or corporation to the public at large by  
advertising, solicitation or other means that the person,  
legal entity or corporation is available to act as a  
fiduciary in this state or is accepting and undertaking to  
perform the duties of a fiduciary in the regular course of  
its business;

C. "trust company" means a corporation holding a

1 certificate issued pursuant to the Trust Company Act;

2 D. "certificate" means a certificate of authority  
3 issued pursuant to the Trust Company Act to engage in trust  
4 business;

5 E. "fiduciary" means executor, administrator,  
6 conservator or trustee;

7 F. "nonprofit corporation" means a nonprofit  
8 corporation as defined in the Nonprofit Corporation Act that  
9 was formed and is operating a pooled trust in compliance with  
10 the requirements of 42 U.S.C. 1396p(d)(4) to provide trust  
11 services for individuals who are disabled, and the nonprofit  
12 corporation is not otherwise engaged in the trust business.  
13 As used in this subsection, "disabled" has the meaning set  
14 forth in 42 U.S.C. 1382c(a)(3); and

15 G. "division" means the financial institutions  
16 division of the regulation and licensing department."

17 SECTION 2. Section 58-9-4 NMSA 1978 (being Laws 1973,  
18 Chapter 191, Section 4, as amended) is amended to read:

19 "58-9-4. CERTIFICATE REQUIRED--COMPLIANCE WITH STATE  
20 AND FEDERAL LAW--SEPARATION OF TRUST FUND AND INVESTMENTS.--

21 A. No person, legal entity or corporation shall  
22 engage in the trust business without first obtaining a  
23 certificate from the director; provided, however, that a bank  
24 having its principal office in this state or an out-of-state  
25 bank not having an established office in this state otherwise

1 authorized under state or federal laws to engage in the trust  
2 business or a savings and loan association having its  
3 principal office in this state acting as trustee or custodian  
4 pursuant to Section 58-10-35 NMSA 1978 may engage in trust  
5 business to the extent permitted in that section without  
6 obtaining a certificate under the Trust Company Act.

7 B. A trust company shall conduct such business in  
8 compliance with all state and federal laws, and all rules  
9 promulgated pursuant to those laws, including the Trust  
10 Company Act, the Uniform Probate Code, the Uniform Prudent  
11 Investor Act and the Uniform Trust Code.

12 C. A trust company shall keep all trust funds and  
13 investments separate and apart from the assets of the trust  
14 company, and all investments made by the trust company as a  
15 fiduciary shall be designated so that the trust or estate to  
16 which such investment belongs is clearly identified."

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

21 "58-9-5. APPLICATION FOR CERTIFICATE--FEE.--

22 A. An application for a certificate shall be in  
23 writing, in such form as the director prescribes, verified  
24 under oath and supported by such information, data and  
25 records as the director may require.

1           B. Each application for a certificate shall be  
2 accompanied by an application fee of one thousand dollars  
3 (\$1,000), made payable to the division. No portion of the  
4 application fee shall be refunded.

5           C. An application for a certificate shall be  
6 accompanied by an oath sworn by each proposed member of the  
7 board of directors of the trust company stating that the  
8 board member will diligently and honestly administer the  
9 affairs of the trust company and will not knowingly violate  
10 or knowingly permit to be violated any state or federal laws  
11 or any rules promulgated pursuant to those laws, including  
12 the Trust Company Act, the Uniform Probate Code, the Uniform  
13 Prudent Investor Act or the Uniform Trust Code. The oath  
14 shall be in such form as the director prescribes and shall be  
15 certified by a notary public.

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

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

1 "58-9-6. MINIMUM CAPITAL.--

2 A. A certificate shall not be issued to an  
3 applicant for certification pursuant to the Trust Company Act  
4 having capital of less than five hundred thousand dollars  
5 (\$500,000).

6 B. The minimum capital requirement shall be waived  
7 for nonprofit corporations."

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

10 "58-9-7. FIDELITY BOND--INSURANCE REQUIRED--EVIDENCE OF  
11 FINANCIAL RESPONSIBILITY REQUIRED.--

12 A. No corporation shall obtain a certificate  
13 without securing and filing with the director a fidelity bond  
14 in the following amounts:

Trust Assets Managed	Fidelity Bond Amounts
by a Fiduciary	
\$3,000,000 or less	\$500,000
More than \$3,000,000 but not	
more than \$15,000,000	\$750,000
More than \$15,000,000 but not	
more than \$25,000,000	\$1,000,000
More than \$25,000,000 but not	
more than \$50,000,000	\$1,500,000
More than \$50,000,000 but not	
more than \$75,000,000	\$2,000,000

1	More than \$75,000,000 but not	
2	more than \$100,000,000	\$2,750,000
3	More than \$100,000,000 but not	
4	more than \$500,000,000	\$3,500,000
5	More than \$500,000,000 but not	
6	more than \$1,000,000,000	\$5,000,000
7	More than \$1,000,000,000 but not	
8	more than \$2,000,000,000	\$6,000,000
9	More than \$2,000,000,000	\$6,000,000 plus
10		\$1,000,000 for every
11		\$1,000,000,000 over
12		\$2,000,000,000.

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

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

1 bond company files a written notice with the director at  
2 least thirty days before canceling the fidelity bond.

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

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

19 F. On or before March 1 of each year beginning  
20 with the year 2019, every trust company shall increase or  
21 adjust its fidelity bond to an amount equal to the amount  
22 required pursuant to Subsection A of this section.

23 G. The fidelity bond required by this section  
24 shall be for the benefit of:

25 (1) any person damaged by an act or acts of

1 a trust company or its directors, officers or employees as a  
2 result of a violation of the provisions of, or any rule  
3 promulgated pursuant to, the Trust Company Act, the Uniform  
4 Probate Code, the Uniform Prudent Investor Act or the Uniform  
5 Trust Code;

6 (2) any person damaged by the negligence,  
7 fraud or embezzlement of a trust company or its directors,  
8 officers or employees; or

9 (3) any person damaged by any other breach  
10 of trust of any trust company.

11 H. The amount of a fidelity bond required by this  
12 section may be reduced by the director for nonprofit  
13 corporations that have otherwise established financial  
14 responsibility to the director's satisfaction.

15 I. A reduction in the amount of a required  
16 fidelity bond approved by the director pursuant to Subsection  
17 H of this section shall be reviewed by the director on an  
18 annual basis, at which time the reduction may be terminated  
19 upon ninety days' written notice by the director to the  
20 nonprofit corporation.

21 J. The director shall revoke the certificate of  
22 any trust company that fails to maintain a bond or to  
23 otherwise supply evidence of financial responsibility as  
24 required by this section.

25 K. The board of directors of a trust company shall SB 137  
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1 acquire suitable insurance to protect the trust company  
2 against burglary, robbery, forgery, theft, fraud,  
3 embezzlement and other similar insurable losses to which the  
4 trust company may be exposed in the operation of the trust  
5 company.

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

9 M. At least once each year, the board of directors  
10 of a trust company shall review the insurance coverage as set  
11 forth in Subsections K and L of this section to determine the  
12 adequacy of coverage in relation to the exposure of the trust  
13 company. The minimum amount of insurance required pursuant  
14 to this section does not automatically represent adequate  
15 insurance coverage in relation to the exposure. The actions  
16 of the board of directors shall be recorded in the minutes of  
17 the board. Immediately after procuring the insurance as  
18 required by Subsections K and L of this section, the board of  
19 directors shall file copies of the insurance policies with  
20 the director.

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

24 O. A trust company may be determined by the  
25 director to have demonstrated a lack of financial

1 responsibility when any of the following nonexclusive  
2 conditions exist:

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

5 (2) the trust company fails to pay, in the  
6 manner commonly accepted by business practices, its  
7 obligations when due.

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

11 (1) the trust company fails to safely manage  
12 its operations;

13 (2) the trust company fails to provide  
14 services to its trust customers pursuant to the trust  
15 company's fiduciary duty; or

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

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

20 "58-9-8. PROCEDURE FOR GRANTING OR DENYING  
21 CERTIFICATE.--

22 A. Upon the filing of an application for a  
23 certificate, the director shall make or cause to be made a  
24 careful investigation and examination and shall issue a  
25 certificate if the director finds:

1                   (1) that the persons who will serve as  
2 directors or officers, insofar as those persons are known,  
3 are qualified to be fiduciaries by character and experience  
4 and that the financial status of the stockholders, directors  
5 and officers is consistent with their responsibilities and  
6 duties as fiduciaries; for nonprofit corporations, any  
7 employee responsible for trust management shall be qualified  
8 to be a fiduciary by character and experience;

9                   (2) that the name of the proposed company is  
10 not deceptively similar to that of another trust company or  
11 bank or is not otherwise misleading;

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

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

19                   B. The director may consider and inquire into such  
20 other facts and circumstances bearing on the proposed trust  
21 company and its relation to its locality as in the director's  
22 opinion may be relevant.

23                   C. The certificate may be granted or denied  
24 without hearing, but the director may, and at the request of  
25 the applicant shall, fix a date for a hearing on the

1 application. At the hearing, any person may be heard with  
2 reference to the facts to be investigated."

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

5 "58-9-9. POWERS OF DIRECTOR.--In addition to other  
6 powers conferred by the Trust Company Act, the director may:

7 A. examine the business and affairs of each trust  
8 company at least once each year and at such other times and  
9 to such extent as the director deems necessary or advisable.

10 The expense of every examination shall be paid by the  
11 corporation examined, in such amount as the director  
12 certifies to be just and reasonable;

13 B. regulate the procedure and practice at  
14 hearings;

15 C. implement by order and rule the Trust Company  
16 Act; in making orders and rules to implement the Trust  
17 Company Act, the director shall act in the interest of  
18 promoting and maintaining a sound trust company system, the  
19 security of assets and trust accounts and the protection of  
20 persons utilizing trust services;

21 D. obtain restraining orders and injunctions to  
22 prevent violation of and enforce compliance with the Trust  
23 Company Act, and orders and rules promulgated pursuant to the  
24 Trust Company Act, the Uniform Probate Code, the Uniform  
25 Prudent Investor Act and the Uniform Trust Code;

1           E. order any person or trust company to cease  
2 violating the Trust Company Act, orders and rules promulgated  
3 pursuant to the Trust Company Act, the Uniform Probate Code,  
4 the Uniform Prudent Investor Act or the Uniform Trust Code,  
5 or to cease engaging in breaches of trust. A copy of such  
6 orders shall be mailed to each director of the trust company  
7 involved;

8           F. suspend, after notice and hearing, any officer  
9 or director, or any employee of a nonprofit corporation, for  
10 fraud, embezzlement or failure to comply with the Trust  
11 Company Act or orders or rules promulgated pursuant to the  
12 Trust Company Act, the Uniform Probate Code, the Uniform  
13 Prudent Investor Act or the Uniform Trust Code; and

14           G. subpoena witnesses, compel their attendance,  
15 require the production of evidence, administer an oath and  
16 examine any person under oath in connection with any subject  
17 relating to a duty imposed upon or a power vested in the  
18 director."

19           SECTION 8. A new section of the Trust Company Act is  
20 enacted to read:

21           "APPEALS.--

22           A. A person aggrieved by a final order of the  
23 director may appeal to the district court pursuant to the  
24 provisions of Section 39-3-1.1 NMSA 1978.

25           B. The commencement of proceedings pursuant to

1 Subsection A of this section does not, unless specifically  
2 ordered by the court, operate as a stay of the director's  
3 order."

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

8 "58-9-10. IMPAIRMENT OF CAPITAL--UNSAFE CONDITIONS--  
9 RECEIVERSHIP.--

10 A. If it appears to the director that the capital  
11 of a trust company is either reduced or impaired below the  
12 minimum capital requirements set forth in Section 58-9-6  
13 NMSA 1978, except for nonprofit corporations, the director  
14 shall order the company to make good any deficit within sixty  
15 days of the date of the order and may restrict and regulate  
16 the operation of the trust business until the capital is  
17 restored.

18 B. If the deficiency in capital has not been made  
19 good within the prescribed time, the director may apply to  
20 the district court in the county in which the principal  
21 office of the company is located to have a receiver appointed  
22 for the liquidation or rehabilitation of the company. The  
23 expense of the receivership shall be paid out of the assets  
24 of the trust company.

25 C. The director may investigate, upon complaint or SB 137  
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1 otherwise, if it appears that a trust company is conducting  
2 business in an unsafe, unsound, financially irresponsible or  
3 injurious manner or in violation of the Trust Company Act, or  
4 the rules promulgated pursuant to that act, the Uniform  
5 Probate Code, the Uniform Prudent Investor Act or the Uniform  
6 Trust Code, or when it appears that any person is engaging in  
7 trust business without being certified pursuant to the Trust  
8 Company Act.

9 D. If it appears upon sufficient ground or  
10 evidence satisfactory to the director that a trust company  
11 has engaged in or is about to engage in any act or practice  
12 in violation of the Trust Company Act, or any rule or order  
13 pursuant to that act, or the Uniform Probate Code, the  
14 Uniform Prudent Investor Act or the Uniform Trust Code, to  
15 the extent that the security of the assets and trust accounts  
16 or the protection of persons utilizing the trust services  
17 have been or may be jeopardized, the director may summarily  
18 order the trust company to cease and desist from that act or  
19 practice, or the director may apply to the district court of  
20 the first judicial district of Santa Fe county to enjoin the  
21 trust company in engaging in the act or practice and to  
22 enforce compliance with the Trust Company Act, the Uniform  
23 Probate Code, the Uniform Prudent Investor Act or the Uniform  
24 Trust Code, or for any other appropriate equitable relief.

25 Upon a proper showing, if a temporary restraining order, a

1 preliminary injunction or a permanent injunction is granted,  
2 a receiver may be appointed for the defendant or defendant's  
3 assets, and the certification of the trust company may be  
4 canceled and such additional or other equitable remedies may  
5 be provided as the court deems appropriate. The director  
6 shall not be required to post a bond.

7 E. If an investigation pursuant to Subsection C of  
8 this section reveals that a trust company is conducting  
9 business in an unsafe, unsound or injurious manner, or in  
10 violation of the Trust Company Act or rules promulgated  
11 pursuant to that act, the Uniform Probate Code, the Uniform  
12 Prudent Investor Act or the Uniform Trust Code, or that any  
13 person is engaging in trust business without being certified  
14 pursuant to the Trust Company Act, the trust company or  
15 person investigated shall pay to the director an  
16 investigation fee at the rate of one hundred fifty dollars  
17 (\$150) per day or fraction of a day for each authorized  
18 representative engaged in the investigation."

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

21 "58-9-11. DISCONTINUING BUSINESS--REORGANIZATION--  
22 CONTINUING JURISDICTION.--

23 A. Whenever any corporation desires to discontinue  
24 doing a trust business and surrenders its certificate or if  
25 its certificate is suspended or revoked, the company shall

1 continue to be subject to the Trust Company Act for so long  
2 as it acts as a fiduciary with respect to any trust business  
3 previously undertaken.

4 B. A trust company seeking to relinquish its  
5 certificate by liquidation shall file an application for  
6 dissolution with the director. The application shall include  
7 a comprehensive plan for dissolution setting forth the  
8 proposed disposition of all assets and liabilities in  
9 reasonable detail to effect a liquidation. The plan of  
10 dissolution shall provide for the discharge or assumption of  
11 all the trust company's known and unknown claims and  
12 liabilities and for the transfer of all its responsibilities  
13 as a trustee to a successor trustee or trustees.

14 Additionally, the application for dissolution shall include  
15 other evidence, certifications, affidavits, documents or  
16 information as the director may require demonstrating how  
17 assets and liabilities will be disposed of, the timetable for  
18 effecting disposition of the assets and liabilities and the  
19 trust company's proposal for addressing any claims that are  
20 asserted after the dissolution has been completed. The  
21 director shall examine the application for completeness and  
22 compliance with the requirements of this section, the  
23 business entity laws applicable to the required type of  
24 dissolution and applicable rules. The director may conduct a  
25 special examination of the trust company for purposes of

1 evaluating the application.

2 C. A trust company seeking to reorganize,  
3 including any change in ownership of the corporation of ten  
4 percent or greater, shall file an application for  
5 reorganization with the director. The application shall  
6 include a comprehensive plan for reorganization setting forth  
7 the proposed disposition of all assets and liabilities in  
8 reasonable detail to effect a reorganization. The plan of  
9 reorganization shall provide for the assumption of all the  
10 trust company's known and unknown claims and liabilities and  
11 for the transfer of all its responsibilities as a trustee to  
12 a successor trustee or trustees. Additionally, the  
13 application for reorganization shall include other evidence,  
14 certifications, affidavits, documents or information as the  
15 director may require demonstrating how assets and liabilities  
16 will be treated and the trust company's proposal for  
17 addressing any claims that are asserted after the  
18 reorganization has been completed. The director shall  
19 examine the application for completeness and compliance with  
20 the requirements of this section, the business entity laws  
21 applicable to the required type of reorganization and  
22 applicable rules. The director may conduct a special  
23 examination of the trust company for purposes of evaluating  
24 the application."

25 SECTION 11. Section 58-9-12 NMSA 1978 (being Laws 1973, SB 137  
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1 Chapter 191, Section 12) is amended to read:

2 "58-9-12. PENALTY FOR NONCOMPLIANCE.--

3 A. It is unlawful for any corporation to carry on  
4 or conduct a trust company business or to advertise or hold  
5 itself out as being engaged in or doing a trust company  
6 business or to use in connection with its business the words  
7 "trust company" or words of similar import without first  
8 having complied with all the provisions of law relating to  
9 trust companies. All officers, directors or trustees of any  
10 corporation violating this section are guilty of a  
11 misdemeanor and shall be punished by a fine not to exceed  
12 five thousand dollars (\$5,000) or imprisonment in the county  
13 jail for a definite term not exceeding one year or both.

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

22 SECTION 12. REPEAL.--Section 58-9-13 NMSA 1978 (being  
23 Laws 1973, Chapter 191, Section 13) is repealed.

24 SECTION 13. EFFECTIVE DATE.--The effective date of the  
25 provisions of this act is July 1, 2018. \_\_\_\_\_