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HOUSE BILL 658

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Al Park

AN ACT

RELATING TO FINANCIAL INSTITUTIONS; PROVIDING RECIPROCAL
CORPORATE FIDUCIARY POWERS TO CERTAIN FOREIGN FIDUCIARIES.

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

Section 1. RECIPROCAL CORPORATE FIDUCIARY POWERS--
CERTIFICATES OF RECIPROCITY.--

A. As used in this section:

(1) "director" means the director of the
financial institutions division of the regulation and licensing
department; and

(2) "foreign fiduciary" means:

(a) a bank or other corporation
organized under the laws of any state of the United States
other than New Mexico; or

(b) a national bank having its principal

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1 place of business in any state of the United States other than
2 New Mexico.

3 B. A foreign fiduciary may act in this state as
4 trustee, executor, administrator, guardian or in any other
5 fiduciary capacity, without the necessity of complying with any
6 law of this state relating to the licensing of foreign banking
7 corporations or relating to the qualifications of foreign
8 fiduciaries to do business in this state, and notwithstanding
9 any prohibition, limitation or restriction contained in any
10 other law of this state, if:

11 (1) the foreign fiduciary is authorized to act
12 in a similar fiduciary capacity in the state in which it is
13 incorporated or, if a national bank, in the state in which it
14 has its principal place of business;

15 (2) a bank or other corporation organized
16 under the laws of New Mexico or a national bank having its
17 principal place of business in New Mexico may act in a
18 fiduciary capacity in that state without a further showing or
19 qualification, other than that it is authorized to act in a
20 similar fiduciary capacity in New Mexico and complies with any
21 law of that state concerning service of process that:

22 (a) may require the appointment of an
23 official or other person for the receipt of process; or

24 (b) contains provisions to the effect
25 that a bank or other corporation, which is not incorporated

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1 under the laws of that state, or, if a national bank, which
2 does not have its principal place of business in that state,
3 acting in that state in a fiduciary capacity, shall be deemed
4 to have appointed an official of that state to be its attorney
5 upon whom may be served all legal process in any proceeding
6 against it relating to any trust, estate or matter in respect
7 of which the corporation acts in that state in a fiduciary
8 capacity, and that the engagement in that state in any acts in
9 a fiduciary capacity shall be evidence of its agreement that
10 the process against it shall be of the same legal force and
11 validity as though served upon it personally; and

12 (3) the foreign fiduciary has a certificate of
13 reciprocity issued pursuant to the provisions of this section.

14 C. A foreign fiduciary eligible to act in a
15 fiduciary capacity in this state pursuant to the provisions of
16 this section may so act whether or not a resident of this state
17 is acting with it in a fiduciary capacity, may use its
18 corporate name in connection with its activity in this state
19 and may be appointed to act in a fiduciary capacity by any
20 court, all notwithstanding any provision of law to the
21 contrary.

22 D. Before acting in any fiduciary capacity in this
23 state, the foreign fiduciary shall file with the director a
24 written application for a certificate of reciprocity. The
25 application shall:

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1 (1) state the correct corporate name of the
2 foreign fiduciary;

3 (2) state the name of the state under the laws
4 of which it is incorporated, or, if a national bank, shall
5 state that fact;

6 (3) state the address of its principal
7 business office;

8 (4) describe the fiduciary capacity it desires
9 to act in New Mexico;

10 (5) state that the application shall
11 constitute the irrevocable appointment of the director as its
12 attorney to receive service of all legal process in any
13 proceeding against it relating to any trust, estate or matter
14 in respect of which the foreign fiduciary may act in New Mexico
15 in the fiduciary capacity pursuant to the certificate of
16 reciprocity;

17 (6) unless the applicant is subject to the
18 jurisdiction of the office of thrift supervision of the United
19 States department of the treasury, include a fiduciary bond in
20 the amount of one million dollars (\$1,000,000) for the benefit
21 of the director in a format approved by the director;

22 (7) be verified by an officer of the foreign
23 fiduciary; and

24 (8) include such certificates of public
25 officials and copies of documents certified by public officials

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1 as may be necessary to show that the foreign fiduciary is
2 authorized to act in a fiduciary capacity similar to that in
3 which it desires to act in New Mexico, in the state in which it
4 is incorporated, or, if a national bank, the state in which it
5 has its principal place of business.

6 E. Upon verification of the contents of the
7 application, the director shall issue to the corporation a
8 certificate of reciprocity. The certificate of reciprocity
9 shall certify that the foreign fiduciary is eligible to act in
10 New Mexico pursuant to this section and shall describe the
11 fiduciary capacity in which the foreign fiduciary is eligible
12 to act.

13 F. A certificate of reciprocity issued to a foreign
14 fiduciary shall remain in effect unless revoked by written
15 notice from the director that the foreign fiduciary has ceased
16 to qualify pursuant to Subsection B of this section or has
17 violated a condition of the certificate; provided that no
18 revocation of a certificate shall affect the right of the
19 foreign fiduciary to continue to act in a fiduciary capacity in
20 estates or matters in which it has theretofore begun to act in
21 a fiduciary capacity pursuant to the certificate.

22 G. Unless otherwise authorized by law to conduct
23 business in New Mexico, a foreign fiduciary shall not establish
24 or maintain a place of business, branch office or agency for
25 the conduct of business as a fiduciary, provided that it may

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1 open and operate a trust representative office in New Mexico
2 if:

3 (1) the foreign fiduciary has received a
4 certificate of reciprocity pursuant to the provisions of this
5 section; and

6 (2) a similar institution is permitted to open
7 and operate a trust representative office under the same or
8 less restrictive conditions in the state in which the foreign
9 fiduciary is organized or has its principal office.

10 H. A foreign fiduciary, insofar as it acts in a
11 fiduciary capacity in this state pursuant to a certificate of
12 reciprocity and the provisions of this section, shall not be
13 deemed to be transacting business in this state, if the foreign
14 fiduciary does not establish or maintain in this state a place
15 of business, branch office or agency for the conduct in this
16 state of business as a fiduciary.

17 I. Every foreign fiduciary to which a certificate
18 of reciprocity has been issued shall be deemed to have
19 appointed the director to be its attorney upon whom may be
20 served all legal process in any proceeding against it relating
21 to the exercise of any fiduciary capacity pursuant to the
22 certificate of reciprocity. Service of process shall be made
23 upon the director or to any person authorized by the director
24 to receive service. The director shall immediately forward the
25 process to the foreign fiduciary, by registered mail, addressed

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1 to it at the address on file with the director. The director
2 shall keep a permanent record showing for all process served,
3 the style of the proceeding, the court in which it was brought,
4 the name and title of the officer serving the process, the day
5 and hour of service, the day of mailing by registered mail to
6 the foreign fiduciary and the address to which it was mailed.

7 J. Nothing in this section shall be construed to
8 prohibit any activity in this state by a bank or other
9 corporation that is not incorporated under the laws of this
10 state or, if a national bank, that does not have its principal
11 place of business in this state that would be lawful in the
12 absence of this section.

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