

1975 Senate Bill 83

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CHAPTER 65, Laws of 1975

AN ACT to amend 220.02 (2) and 223.10; and to create 220.04 (7) and 223.105 of the statutes, relating to uniform regulation of corporations, associations, partnerships and business trusts acting in fiduciary capacities and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 220.02 (2) of the statutes is amended to read:

220.02 (2) The commissioner of banking shall enforce all laws relating to banks and banking in this state, and shall enforce and cause to be enforced every law relating to the supervision and control thereof, including those relating to state:

(a) State banks in under chs. 220 and 221, mutual savings banks in under ch. 222 and trust company banks in under ch. 223; ~~and all laws relating to the.~~

(b) The lending of money in under s. 138.09 or those relating to finance companies, motor vehicle dealers, adjustment service companies, community currency exchanges and collection agencies in under ch. 218; ~~and those relating to sellers.~~

(c) Sellers of checks in under ch. 217; ~~and he shall enforce and cause to be enforced every law relating to the supervision or control thereof.~~

(d) Fiduciary operations of organizations under ss. 220.04 (7) and 223.105.

SECTION 2. 220.04 (7) of the statutes is created to read:

220.04 (7) (a) In this subsection:

1. "Fiduciary operation" has the meaning designated under s. 223.105 (1) (a).
2. "Fiduciary property" means that property held by an organization as trustee or in any fiduciary capacity requiring the issuance of letters by a court or probate registrar in this state.
3. "Organization" has the meaning designated under s. 223.105 (1) (b).

(b) The commissioner of banking may, with the approval of the banking review board, establish uniform rules regulating organizations engaging in fiduciary operations. Such rules may:

1. Authorize the office of the commissioner of banking or any other state agency having jurisdiction over the organization to require the organization to submit periodic reports, in such form and containing such information as the commissioner of banking may prescribe, regarding the organization's fiduciary operations.
2. Require the organization to maintain separate books of account for its fiduciary operations and to maintain fiduciary property separate from the property of the organization.
3. Require the organization to maintain reasonable safeguards to protect fiduciary property including the maintenance of an indemnity fund in the same manner as that required of trust company banks under s. 223.02.

SECTION 3. 223.10 of the statutes is amended to read:

223.10 (title) Organizations as fiduciaries. Except as provided in ~~ss. 222.21 and s. 880.35, no court of or probate registrar in this state shall may~~ appoint or issue letters to any corporation, association, partnership or business trust as trustee, executor, administrator personal representative, guardian, conservator, assignee, receiver, or in any other fiduciary capacity unless such corporation, association, partnership or business trust is organized under ss. 223.01 to 223.09 or is a state bank entitled under s. 221.04 (6) to exercise fiduciary powers subject to regulation and examination under s. 223.105, or is a national bank, federal savings and loan association or federal credit union with authority to exercise such powers.

SECTION 4. 223.105 of the statutes is created to read:

223.105 Regulation of organizations acting as fiduciaries. (1) DEFINITIONS. In this section:

(a) "Fiduciary operation" means any action taken by an organization acting as a trustee or in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state.

(b) "Organization" means any corporation, association, partnership or business trust, other than a national bank, federal savings and loan association or federal credit union or other than a corporation, association or partnership, all of whose shareholders or members are licensed under s. 256.28.

(c) "Trustee" has the meaning designated in s. 701.01 (5).

(2) ORGANIZATIONS SUBJECT TO RULES AND EXAMINATION. Any organization which holds itself out to residents of this state as available to act, for compensation, as trustee or which seeks or consents to serve in any fiduciary capacity requiring appointment or issuance of letters by a court or probate registrar in this state is subject to:

(a) Such rules as may be established by the commissioner of banking under s. 220.04 (7); and

(b) Periodic examination of its fiduciary operations as provided under sub. (3).

(3) PERIODIC EXAMINATION BY STATE AGENCY. (a) To assure compliance with such rules as may be established under s. 220.04 (7) the office of the commissioner of banking, commissioner of credit unions, commissioner of insurance, commissioner of savings and loan and commissioner of securities shall, at least once every 18 months, examine the fiduciary operations of each organization which is under its respective jurisdiction and is subject to examination under sub. (2). If a particular organization subject to examination under sub. (2) is not otherwise under the jurisdiction of one of the foregoing agencies, such examination shall be conducted by the office of the commissioner of banking.

(b) The cost of examinations conducted under par. (a) shall be determined by the examining agency, and assessed to and paid by the organization which is examined.

(c) In lieu of an examination under par. (a), the agency responsible for conducting such an examination may accept an examination made within a reasonable period by any other agency of a state or of the federal government.

(4) NOTICE OF FIDUCIARY OPERATION. Except for those organizations licensed under ch. 221 or this chapter, any organization engaged in fiduciary operations as defined in this section shall within 120 days of the effective date of this act (1975) and subsequently as required by regulation, notify the commissioner of banking, the commissioner of credit unions, the commissioner of insurance, the commissioner of savings and loans or the commissioner of securities of such fact, directing such notice to the commissioner then exercising regulatory authority over such organization or, if there is none, to the commissioner of banking. Any organization which intends to engage in fiduciary operations shall, prior to engaging in such operations, notify the appropriate commissioner of such intention. The notifications required under this subsection shall be on such forms and contain such information as may be required by the rules adopted by the commissioner of banking.

(5) ENFORCEMENT REMEDY. The commissioner of banking or other appropriate commissioner under this section shall upon the failure of such organization to submit notifications or reports required under this section or otherwise to comply with the provisions of this section, or rules established by the commissioner of banking under s. 220.04 (7), upon due notice, order such defaulting organization to cease and desist from engaging in fiduciary activities and may apply to the appropriate court for enforcement of such order.

SECTION 5. Program responsibilities. At the appropriate place in the lists of program responsibilities specified for the offices of the commissioner of banking, commissioner of credit unions, commissioner of insurance, commissioner of savings and loan and commissioner of securities, in sections 15.551 (intro.), 15.591, 15.731, 15.821 (intro.) and 15.851 of the statutes, respectively, insert reference to "s. 223.105".
