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Nevada's Banking Regulator Tells Lawmakers Tough Laws More Important than More Business

Posted by [Scott Martin](#) in [News](#) on March 26, 2011

At a time when Nevada is suffering from the worst financial crisis since the great depression, Nevada's top banking cop George E. Burns says he's done a good job keeping the state's financial institutions safe.

Since George Burns took over the job safeguarding Nevada's banks and trust companies in late 2007, his tenure has been marked by the closure of more institutions than any time in recent memory.

You would think all this tough regulation would be good for the state. But nothing Burns has accomplished has helped bring in new investors from other states and abroad, create jobs, boost home prices or restore Nevada's soiled banking reputation.

As a matter of fact, experts say, he's made matters worse because his red-tape regulation has sent new banking and trust business to other states.

After years of watching the Nevada trust industry shrink despite [some of the best fiduciary statutes](#) around, state lawmakers are now considering a bill that would stop Burns from his binge of "regulations gone wild."

In an effort to slow Burns down from promoting new [rules](#), [Nevada Senate Bill 198](#) was introduced last week before the Nevada legislature. It is a straightforward attempt to restore the competitive advantages that once enticed out-of-state trust companies to come to the Silver State.

Sponsored by Senator Michael Roberson, the proposal fine-tunes the application process, clarifies the interstate branching rules and aims to eliminate the requirement that forces trust companies to set aside at least \$500,000 of their reserves in cash.

However, while Burns is officially lukewarm on most of the bill's provisions, he draws a line at loosening the cash requirement — apparently because if a trust company fails, selling off its stocks and bonds would be too much trouble.

"Readily available cash to fund the costs of receivership is essential because the ability of the state or receiver to liquidate securities portfolios is cumbersome and protracted," he testified in a recent Nevada state hearing.

How much cash does the "king" need?

By his estimates, it takes at least \$500,000 to \$1 million to wind down a failed trust company's affairs, so it makes sense that every Nevada-chartered vendor keep that much capital on hand in the event of disaster.

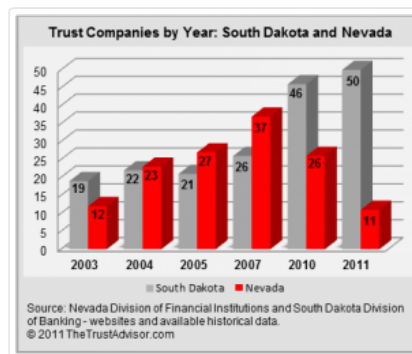
But in a world where elite family offices and other entities looking to set up trust companies can pick and choose where they want to do business, this actually seems a little too "prudent."

Nominally "conservative" states like New Hampshire — which actually disparage the Nevada rules as too loose to protect consumers — are fine with trust companies investing their entire reserve in marketable securities and earning a decent return on their capital.

Back when Nevada only insisted on \$300,000 from trust companies — exactly what the regs want from start-up depository banks, incidentally — the net opportunity cost of sinking \$150,000 into near-zero-yielding Treasury bills was relatively small.

After the state [tightened the rules](#) in 2009, potential entrants are finding it easier to go to South Dakota, which only mandates \$200,000 in cash.

"Now that the minimum capital has increased to \$1 million, it is impractical for companies to maintain half



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their equity in cash," Las Vegas trust attorney Matthew Saltzman tells me.

July 2009 (1)

When pressed in the hearing, Burns conceded that he's not really married to the \$500,000 cash minimum. He just wants Nevada-chartered trust companies to keep as much cash as possible to ease the "cumbersome" task of liquidating the portfolio in a worst-case 2008-level scenario.

And while cash may be king, he's also [been quoted](#) as defending troubled Nevada banks on the grounds that numbers are "not the entire picture."

At the time, he said regulators need to consider "qualitative factors" like management, business plan and active oversight — which would arguably mean the character of a would-be trust company operator is the kingmaker.

Return to the Delaware of the West

As it is, Nevada under Burns' watch has seen the number of trust companies licensed to do business [drop](#) significantly while the roster in South Dakota has [practically doubled](#).

Insiders tell me they suspect there hasn't even been an application for a Nevada charter in years, which has cost the state a bit of revenue in lost fees.

Although trust companies don't employ hordes of people, every white-collar job that Nevada can lure to the state — where unemployment only recently dipped below 14%, compared to South Dakota's 4% — counts a lot to lawmakers and the people who vote for them.

State Senator Michael Schneider, who chairs the committee reviewing the bill, noted in the hearing that it's desirable that Nevada strive to regain its mantle as the "Delaware of the West," Saltzman says.

Of course, there are issues of public safety to uphold. Burns' testimony brought up the unfortunate case of Enterprise Trust Company, which had a Nevada charter but only a token physical presence in the state.

Shortly after the SEC filed a [formal complaint](#) on behalf of the company's Illinois clients, the Nevada FID's own investigations forced it to [shut Enterprise down](#) in a hurry.

With only \$300,000 in regulatory capital, Burns estimates that Enterprise clients lost \$48 million. Under the new rules, of course, they would have still lost over \$47 million, so the real burden is always going to be on the backs of the regulators, not the regulatory capital.

In that light, it's admirable that, as Burns says, "gone now are the past days of anyone with a little capital coming to Nevada, easily securing a trust license, hanging it in a resident agent's office, and heading off somewhere else."

But as David Dunn — longtime Las Vegas resident and CEO of South Dakota-chartered Kingsbridge Trust — can attest, it's a fine balancing act between making it tough for the shady operators and making it too tough for the legitimate vendors.

Dunn was probably one of the last people to consider a Nevada trust charter, but as the new rules were set in motion, he [choose South Dakota instead](#).

Dunn asked Burns at the hearing, "Where were your examiners before Enterprise failed?" Burns never replied.

Burns is facing background noise about whether he has enough of the new governor's confidence to stay on as commissioner.

Since taking office in January, [Governor Brian Sandoval](#) has fired two agency chiefs, the heads of Nevada's Tax and Mortgage divisions: one for incompetence, the other for being a political liability. Questions remain whether Burns will be the third to go.

[Scott Martin](#), contributing editor, The Trust Advisor Blog. Jerry Cooper and Steve Maimes contributed to the editing and research.

Permalink: <http://thetrustadvisor.com/news/sb198>

[David Dunn](#), [George E. Burns](#), [Kingsbridge Trust](#), [Matthew Saltzman](#), [Michael Roberson](#), [Nevada](#), [Nevada FID](#), [Nevada Trust Companies](#), [SB 198](#)

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