

AN ACT

ENTITLED, An Act to revise certain provisions regarding the trust business in banks and the trust company business.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 51A-5-1 be amended to read as follows:

51A-5-1. No person may assume or use the word "trust" in such person's name in any manner which infers or suggests that the person has authority to transact such business unless the person is authorized to transact trust business pursuant to this title. A violation of this paragraph is a Class 2 misdemeanor.

No bank may exercise trust powers unless it is so authorized by its articles of incorporation and approved by the director and it has qualified by making the deposit required by § 51A-5-4. Any person who exercises trust powers in violation of this section is guilty of a Class 2 misdemeanor.

Section 2. That § 51A-6-16 be amended to read as follows:

51A-6-16. Upon finding that the trust company has been duly authorized to commence the business for which it is organized in this state, or by the comptroller of the currency if the trust company is affiliated with a national bank, and that it has made the deposit required by § 51A-5-4, the circuit court shall enter an order substituting the trust company in every fiduciary capacity for a specified affiliated bank, except as may be otherwise specified in the application. Upon entry of the order, the trust company shall, without further act, be substituted in every such fiduciary capacity, and the substitution may be evidenced by filing a copy of the order with the register of deeds in any county of this state.

Section 3. That § 51A-6A-4 be amended to read as follows:

51A-6A-4. No trust company may be incorporated or organized under the laws of this state or transact trust company business in this state until the application for its incorporation or organization

and application or authority to do business and the location of its principal office have been submitted to and approved under the same procedure for bank applications as provided in § 51A-2-16, except that conditions for considering an application involving a trust company shall be as set forth in § 51A-6A-5. The director shall prescribe the form for making an application and any application submitted shall contain such information as required. The applicant may, with approval of the director, designate confidential information.

If upon the dissolution or insolvency of any trust company, it is the opinion of the director that by reason of the loss of services in the community, an emergency exists which may result in serious inconvenience or losses to customers or it is in the public interest of the community, the director may accept and approve an application for incorporation or organization and an application for authority to do business without prior notice. Upon approval of an application by the director for authority to do business of a successor trust company, the director may call a special meeting of the commission and submit the application to the commission for its review and confirmation.

Section 4. That § 51A-6A-5 be amended to read as follows:

51A-6A-5. In ruling on an application required under this chapter, the director or the commission, as the case may be, shall consider the following:

- (1) The financial standing, general business experience, and character of the organizers or incorporators of the applicant;
- (2) The character, qualifications, and experience of the officers of the applicant;
- (3) The applicant's ability to serve the community or clients as described in the application;  
and
- (4) The prospects for success of the proposed trust company.

In any hearing on the application before the commission, the director shall submit to the commission for its consideration the director's findings with respect to the above conditions together

with all other pertinent information in the director's possession. If the director or the commission, as the case may be, determines any of these conditions unfavorable to the applicant, then the application shall be disapproved, but if not, then the application shall be approved. Any proceeding before the commission on an application shall be held in conformance with chapter 1-26.

Section 5. That § 51A-6A-7 be amended to read as follows:

51A-6A-7. Any three or more persons may organize a trust company and make and file articles as provided by the laws of this state. No trust company may be organized or incorporated to engage in business as such until the articles have been submitted and approved in accordance with § 51A-6A-4. The name selected for the trust company may not be the name of any other trust company doing business in the state, and the director shall accept or reject the name. However, the approval of a trust company name by the director may not supersede any person's rights pursuant to state or federal trademark law. The articles, in addition to any other information required by law, shall state:

- (1) That the corporation or limited liability company is formed for the purpose of engaging in the trust company business; and
- (2) The period for which such corporation or limited liability company is organized, not exceeding twenty years.

The articles may contain any other provisions as are consistent with law. The articles shall be subscribed by one or more of the organizers of the proposed trust company and shall be acknowledged by them. The full amount of the capital required by § 51A-6A-19 shall be subscribed before the articles are filed.

Section 6. That § 51A-6A-9 be amended to read as follows:

51A-6A-9. The existence of any trust company shall date from the filing of its articles from which time it shall have and may exercise the incidental powers conferred by law upon corporations or limited liability companies, as applicable. However, no trust company may transact any business

except the election of officers, the taking and approving of their official bonds, the receipts of payment upon stock subscriptions, and other business incidental to its organization, until it has secured the required approval and the authorization of the director to commence business.

Section 7. That § 51A-6A-10 be amended to read as follows:

51A-6A-10. When the capital of any trust company is paid in, the president or cashier shall transmit to the director a verified statement showing the names and addresses of all owners, the amount of stock or units each subscribed, and the amount paid in by each. The director shall review each trust company as to the amount of money paid in for capital, surplus, and undivided profits; by whom the amounts were paid, the amount of capital stock or units owned in good faith by each owner, and whether the trust company has complied with the provisions of law. If the director determines that the trust company has been organized as provided by law, has complied with the provisions of law, and has secured the required approval, the director shall issue a certificate showing that the trust company has been organized and its capital paid in as required by law and that the trust company is authorized to transact trust business as provided by law.

Section 8. That § 51A-6A-19 be amended to read as follows:

51A-6A-19. For purposes of this section, the capital of a trust company is the total of the aggregate par value of its outstanding shares of capital stock or ownership units, its surplus, and its undivided profits. The minimum capital of a trust company is two hundred thousand dollars. The director may require that the trust company have more capital than the amount specified if the director determines that the amount and character of the anticipated business of the trust company and the safety of the customers so require. This chapter recognizes that capital for a trust company serves a different purpose than does capital for a bank. It is not intended that capital requirements for trust companies be judged by the same standards as banks. Basic protection for fiduciary clients of a trust company shall be provided by the purchase of a fidelity bond and a director's and officer's

liability insurance policy. The bond and insurance shall be in an amount of not less than one million dollars each. The bond and insurance required to be secured by a trust company shall provide that any bonding or insurance company providing the bond or insurance coverage shall give at least ninety days notice of cancellation or renewal of the bond or insurance policy to the trust company and to the director. Except as may be provided elsewhere in this chapter, no trust company may reduce voluntarily its capital stock or ownership units or surplus below the amount required in this section.

Section 9. That § 51A-6A-39 be amended to read as follows:

51A-6A-39. All information the director generates in making an investigation or examination of a state trust company is confidential. All confidential information is the property of the state and is not subject to disclosure except upon the written approval of the director. The director shall give ten days' prior written notice of intent to disclose confidential information to the affected trust company. Any trust company which receives a notice may object to the disclosure of the confidential information and shall be afforded the right to a hearing in accordance with the provisions of chapter 1-26. If a trust company requests a hearing, the director may not reveal confidential information prior to the conclusion of the hearing and a ruling. Disclosure of confidential information shall be made only to formal regulatory bodies which clearly have a need for the confidential information. Prior to dissemination of any confidential information, the director shall require a written agreement not to reveal the confidential information by the party receiving the confidential information. In no event may the director disclose confidential information to the general public, any competitor, or any potential competitor of a trust company.

Section 10. That § 51A-6A-54 be amended to read as follows:

51A-6A-54. No trust company incorporated under the laws of this state may change its place of business, from one city or town to another or from one location to another within the same city or

town, without the prior approval of the director. Any trust company desiring to change its place of business shall file a written application with the director in the form and containing the information as the director requires. The director shall examine and investigate the application and approve or disapprove the application. The expenses of the examination and investigation shall be paid by the trust company.

Section 11. That § 51A-6A-58 be amended to read as follows:

51A-6A-58. After first applying for and obtaining the approval of the director, one or more trust service offices may be established and operated by a trust company incorporated under the laws of this state or by an out-of-state trust institution, if and to the extent that the state, territory, or district in which the out-of-state trust institution is chartered or licensed to engage in a trust company business grants authority for a trust company organized and doing business under the laws of this state to establish an office in that state, territory, or district. An application to establish and operate a trust service office or to relocate an existing trust service office shall be submitted and approved in the manner set forth in § 51A-6A-4.

A trust company may establish a trust service office in another state, territory, or district and may conduct any activities at that office that are permissible for a trust company under the laws of that state, territory, or district subject to the laws of this state and subject to the rules, orders, or declaratory rules of the commission or the director.

Section 12. That § 51A-6A-59 be repealed.

Section 13. That § 51A-6A-60 be repealed.

Section 14. That § 51A-6A-65 be amended to read as follows:

51A-6A-65. Any state bank chartered under Title 51A which exercises only trust powers and which has never accepted deposits may make application to the director to reorganize as a trust company under chapter 51A-6A. An application for conversion from a state bank to a trust company

shall consist of a letter of intent signed by a majority of the bank's board of directors together with any additional information required by the director. The stockholders of the bank shall make, execute, and acknowledge amendments to their articles of incorporation as required in order to terminate the corporation's former status as a bank and to conform its articles of incorporation to the requirements of chapter 51A-6A. Upon receipt of the application for approval of a conversion, the director shall conduct such investigation as the director deems necessary to ascertain whether:

- (1) The letter of intent and supporting items satisfy the requirements of this title;
- (2) The plan of conversion adequately protects the interests of the beneficiaries of any trusts for which the bank is a trustee; and
- (3) The requirements for a conversion under all applicable laws have been satisfied and the resulting trust company would satisfy the requirements for trust companies authorized by this title.

Upon filing and approval of such articles of amendment as provided by this title, and upon the issuance of a certificate of authority by the director as provided by this title, such corporation may transact business as a trust company and is subject to regulation as a trust company under this title.

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\_\_\_\_\_  
I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 85  
  
\_\_\_\_\_  
Secretary of the Senate  
\_\_\_\_\_

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 85  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.  
  
By \_\_\_\_\_  
for the Governor  
\_\_\_\_\_

The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
\_\_\_\_\_

STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State