

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

239H0665

HOUSE BILL NO. 1250

Introduced by: Representatives Olson (Mel) and Sebert and Senator Olson (Ed)

1 FOR AN ACT ENTITLED, An Act to provide for notice by financial institutions of certain trust
2 account overdrafts.

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

4 Section 1. Terms used in this Act mean:

5 (1) "Disciplinary board," the State Bar Disciplinary Board;

6 (2) "Financial institution," a bank, savings and loan association, credit union, savings
7 bank, and any other business or person that accepts for deposit funds held in trust by
8 attorneys;

9 (3) "Instrument," a check or other negotiable instrument as defined in chapter 57A-3;

10 (4) "Properly payable," an instrument that, if presented in the normal course of business,
11 is in a form requiring payment under the laws of the State of South Dakota;

12 (5) "Trust account," any account maintained by an attorney admitted to practice law in
13 the State of South Dakota for the purpose of keeping funds belonging to clients or
14 third parties separate from the attorney's own funds as required by South Dakota
15 Rules of Professional Conduct, Rule 1.15(a). The term also includes any account



1 maintained by an attorney for funds held in trust in connection with a representation
2 in any other fiduciary capacity, including as trustee, agent, guardian, executor, or
3 otherwise.

4 Section 2. If a lawyer maintains a trust account at a financial institution, the lawyer shall
5 provide notice to the financial institution identifying, by name and account number, any trust
6 account holding money belonging to any client or third party. The notice shall be in a form
7 provided by the disciplinary board and shall contain a reminder that any identified account is
8 subject to the overdraft notification requirements of this Act.

9 Section 3. Each financial institution shall provide the disciplinary board with written notice
10 if an instrument, properly payable, is presented against a lawyer's trust account containing
11 insufficient funds, irrespective of whether or not the instrument is honored.

12 Section 4. A financial institution may charge a reasonable fee for the providing the
13 disciplinary board with notice of any trust account overdraft, not to exceed twenty-five dollars
14 for each notice.

15 Section 5. A financial institution has good faith immunity for compliance with this Act,
16 including the erroneous reporting of a trust account overdraft and for the erroneous failure to
17 report a trust account overdraft.

18 Section 6. The disciplinary board shall provide financial institutions with a form for notice
19 of trust account overdraft. However, a financial institution may choose to provide such notice
20 as it may deem appropriate if the notice identifies the name of the lawyer, the account, and the
21 financial institution upon which the instrument was drawn.

22 Section 7. Any notice of a trust account overdraft to the disciplinary board is subject to § 16-
23 19-99.

24 Section 8. If a law firm maintains one or more trust accounts in the name of the firm, only

1 one notice from a member of the firm need be provided for each trust account. However, every
2 member of the firm is responsible for insuring that notice of each trust account is given to each
3 financial institution where an account is maintained.

4 Section 9. Any notice from any financial institution to the disciplinary board shall be directed
5 to: Secretary-Treasurer, Disciplinary Board, State Bar of South Dakota, 222 East Capitol Ave.,
6 Pierre, South Dakota.