

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

733J0519

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1123** - 01/30/2004

Introduced by: Representatives Michels and Konold and Senators Knudson and Bogue

1 FOR AN ACT ENTITLED, An Act to authorize banks to be organized as limited liability
2 companies.

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

4 Section 1. That subdivision (1) of § 51A-1-2 be amended to read as follows:

5 (1) "Bank," any corporation or limited liability company, organized pursuant to chapter
6 47-34A, authorized under this title to engage in the business of banking or in the
7 combined business of a bank and trust company or in the combined business of a
8 bank with trust powers;

9 Section 2. That chapter 51A-3 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 A bank may be organized as a limited liability company. However, any bank that is
12 organized as a limited liability company may not have an existence longer than twenty years.
13 The commission shall promulgate rules pursuant to chapter 1-26, consistent with Title 51A, for
14 the organization, management, extension of its charter, and general administration of a bank that
15 is organized as a limited liability company. The rules shall facilitate the organization and capital



1 structure, the offering of trust business and the ability to develop branch bank and drive-in
2 facilities, the offering of remote service banking and bank services, the acceptance of deposits
3 and the making of investments, the offering of safe deposit and safe keeping protocols, the
4 making of loans, the reorganization of the limited liability company bank, and the operation of
5 a bank organized as a limited liability company to operate on an equal and parity basis with a
6 bank organized as a corporation.

7 Section 3. That § 10-43-10.1 be amended to read as follows:

8 10-43-10.1. Net income, in the case of a financial institution, is taxable income as defined
9 in the Internal Revenue Code, as amended, and in effect on January 1, 2003, and reportable for
10 federal income tax purposes for the taxable year, but subject to the adjustments as provided in
11 §§ 10-43-10.2 and 10-43-10.3. If a financial institution has elected to file its federal tax return
12 pursuant to 26 USC § 1362(a), as amended, and in effect on January 1, 1997, net income shall
13 be computed in the same manner and in the same amount as if that institution had continued to
14 file its federal tax return without making the election and the financial institution shall continue
15 to be treated as a separate corporation for the purposes of this chapter. If a financial institution
16 is organized as a limited liability company, the limited liability company shall be treated as a
17 separate corporation for the purpose of this chapter.

18 Section 4. That § 10-43-10.3 be amended by adding thereto a NEW SUBDIVISION to read
19 as follows:

20 For those financial institutions organized as limited liability companies, imputed federal
21 income taxes in an amount equal to the taxes that would have been paid on net income as
22 defined in § 10-43-10.1 had the financial institution elected to file as a subchapter C corporation
23 under the Internal Revenue Code.

24 Section 5. That § 47-34A-211 be amended to read as follows:

1 47-34A-211. (a) A limited liability company, and a foreign limited liability company
2 authorized to transact business in this state, except a bank organized pursuant to section 2 of this
3 Act, shall deliver to the secretary of state for filing an annual report that sets forth:

- 4 (1) The name of the company and the state or country under whose law it is organized;
- 5 (2) The address of its registered office and the name and address of its registered agent
6 for service of process in this state;
- 7 (3) The address of its principal office;
- 8 (4) The names and business addresses of any managers;
- 9 (5) The dollar amount of the total agreed contributions to the limited liability company.

10 (b) Information in an annual report must be current as of the date the annual report is signed
11 on behalf of the limited liability company.

12 (c) The first annual report must be delivered to the secretary of state concurrent with the
13 filing of the articles of organization. Subsequent annual reports must be delivered to the
14 secretary of state before the first day of the second month following the anniversary month of
15 the filing date.

16 (d) If an annual report does not contain the information required in subsection (a) or the fees
17 required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited
18 liability company or foreign limited liability company and return the report to it for correction.
19 If the report is corrected to contain the information required in subsection (a) or the fees
20 required by § 47-34A-212 and delivered to the secretary of state within thirty days after the
21 effective date of the notice, it is timely filed.