

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

490M0214

HOUSE ENGROSSED NO. **SB 68** - 02/21/2006

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the administration of
2 trusts and estates.

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

4 Section 1. That § 51A-6A-31 be amended to read as follows:

5 51A-6A-31. The director shall examine each trust company at least once every ~~eighteen~~
6 thirty-six months ~~and may examine any trust company or more frequently~~ if the director
7 considers it necessary to make a full and careful examination and inquiry into the condition of
8 the affairs of the trust company. For purposes of the examination, the director may administer
9 oaths and examine under oath the board members, officers, employees, and agents of any trust
10 company. The examination shall be reduced to writing by the person making it, and the person's
11 reports shall contain a full, true, and careful statement of the condition of the trust company. The
12 director, in lieu of making a direct examination and inquiry at the trust company office, may
13 ~~accept the examination and report of an authorized federal agency~~ examine the trust company
14 in whole or in part by examining the trust company records or documents off-site. For an
15 examination conducted wholly or partially off-site, the director may require production of any
16 records or documents of the trust company at the director's office. The director shall provide a



1 copy of the written examination report to the governing board of the trust company. Neither the
2 director nor any employee of the Division of Banking may have any ownership interest in a trust
3 company.

4 The director may examine an out-of-state trust institution's trust service offices either on-
5 or off-site to determine whether such offices are being operated in compliance with the laws of
6 this state and in accordance with safe and sound practices.

7 The director may enter into cooperative, coordinating, and information-sharing agreements
8 with any other supervisory agency or any organization affiliated with or representing one or
9 more supervisory agencies with respect to the periodic examination or other supervision of any
10 trust company or out-of-state trust institution, and the director may accept such agency's or
11 organization's report of examination or investigation in lieu of conducting an examination or
12 investigation.

13 Section 2. That § 51A-6A-19 be amended to read as follows:

14 51A-6A-19. For purposes of this section, the capital of a trust company is the total of the
15 aggregate par value of its outstanding shares of capital stock or ownership units, its surplus, and
16 its undivided profits. The minimum capital of a trust company shall be two hundred thousand
17 dollars. The commission may require that the trust company have more capital than the amount
18 specified if the commission determines that the amount and character of the anticipated business
19 of the trust company and the safety of the customers so require. This chapter recognizes that
20 capital for a trust company serves a different purpose than does capital for a bank. It is not
21 intended that capital requirements for trust companies be judged by the same standards as banks.
22 Basic protection for fiduciary clients of a trust company shall be provided by the purchase of
23 a surety bond ~~or a~~ fidelity bond, ~~or both~~ director's and officer's liability insurance policy, or all
24 or any of the foregoing as the director may determine. The bond or insurance shall be in an

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

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

8 51A-6A-4. No trust company may be incorporated or organized under the laws of this state
9 or transact trust company business in this state until the application for its incorporation or
10 organization and application for authority to do business has been submitted to and approved
11 by the commission. The commission shall approve or disapprove the establishment of any trust
12 company and the location of its principal office. The commission shall prescribe the form for
13 making an application, and any application made to the commission shall contain such
14 information as it requires. The applicant may, with the approval of the director, designate
15 confidential information contained in its application that is not subject to disclosure except in
16 accordance with §§ 51A-6A-39 and 51A-6A-46.2. The commission may not approve any
17 application until the director first investigates and examines the application and the applicants.
18 All proceedings before the commission on any application shall be held in conformance with
19 chapter 1-26.

20 If upon the dissolution or insolvency of any trust company it is the opinion of the director
21 that by reason of the loss of services in the community, an emergency exists which may result
22 in serious inconvenience or losses to customers or it is in the public interest of the community,
23 the director may accept and approve an application for incorporation or organization and an
24 application for authority to do business, subject to confirmation and subsequent approval by the

1 commission. Upon approval of an application for authority to do business of a successor trust
 2 company, the director shall call a special meeting of the commission, and submit the application
 3 to the commission for its confirmation and approval.

4 Section 4. That § 55-4-15 be amended to read as follows:

5 55-4-15. No corporate trustee ~~shall, unless expressly authorized by the trust instrument, may~~
 6 purchase for a trust shares of its own stock, or its bonds, or other securities, or the stock, bonds,
 7 or other securities of an affiliate.

8 Section 5. That § 55-16-4 be amended to read as follows:

9 55-16-4. Neither the transferor nor any other natural person who is a nonresident of this state
 10 nor an entity that is not authorized by the law of this state to act as a trustee or whose activities
 11 are not subject to supervision as provided in § 55-16-3 may be considered a qualified trustee.
 12 However, nothing in this chapter precludes a transferor from appointing one or more co-trustees,
 13 trust advisors, trust protectors, or other fiduciaries as defined in subdivision 55-1B-1(4),
 14 including:

- 15 (1) ~~Trust advisors~~ A fiduciary who ~~have~~ has authority under the terms of the trust
 16 instrument to remove and appoint qualified trustees or trust advisors;
- 17 (2) ~~Trust advisors~~ A fiduciary who ~~have~~ has authority under the terms of the trust
 18 instrument to direct, consent to, or disapprove distribution from the trust; and
- 19 (3) ~~Trust advisors described in § 55-1B-1; A fiduciary~~ whether or not such ~~trust advisors~~
 20 fiduciary would meet the requirements imposed by § 55-16-3.

21 ~~—For purposes of this section, the term, trust advisor, includes a trust protector or any other~~
 22 ~~person who, in addition to a qualified trustee, holds one or more trust powers.~~

23 Section 6. That § 55-16-5 be amended to read as follows:

24 55-16-5. Any individual may serve as a ~~trust advisor~~ fiduciary described in ~~§ 55-1B-1~~

1 subdivision 55-1B-1(4), notwithstanding that such individual is the transferor of the qualified
2 disposition, but such an individual may not otherwise serve as ~~trust advisor~~ a fiduciary of a trust
3 that is a qualified disposition except with respect to the retention of the veto right permitted by
4 subdivision 55-16-2(2).

5 Section 7. That § 21-22-17 be amended to read as follows:

6 21-22-17. Notice of all hearings on all reports of the trustee and on all petitions filed shall
7 be given as provided in this chapter. ~~The notice shall be signed by the court and must show the~~
8 ~~time and place of hearing and the nature of such hearing. The court shall fix the time and place~~
9 ~~of the hearing. Notice of the time and place of the hearing, along with the nature of the hearing,~~
10 ~~shall be given as provided in this chapter.~~ When the hearing is on an account of the trustee ~~the~~
11 ~~court may order that~~ a copy of the account shall be served with the notice.

12 Section 8. That § 21-56-1 be amended to read as follows:

13 21-56-1. Wherever a provision is made in this title for the fixing of a time and place of
14 hearing or the issuance of a notice, a judge or clerk of courts may fix the time and place for the
15 hearing ~~and sign the notice. An order for hearing or notice signed by a clerk of courts need not~~
16 ~~be attested, but shall be sealed with the official seal of the circuit court. The notice may be~~
17 ~~signed by the judge, the clerk of courts, or the attorney for the petitioner.~~

18 Section 9. That § 55-5-8 be amended to read as follows:

19 55-5-8. The trustee shall diversify the investments of the trust unless, under the
20 circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and
21 furthers the purposes of the trust not to diversify. Regardless of concentration or lack of
22 diversification, the trustee need not diversify if the trust instrument allows or directs retention
23 of assets forming part of the trust corpus.

24 Section 10. That chapter 55-3 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If, in any action brought against a trustee of a trust, a foreign court takes any action whereby
3 such court declines to apply the law of this state in determining the validity, construction, or
4 administration of such trust, or the effect of a spendthrift provision thereof, the trustee shall
5 immediately upon the foreign court's action and without the further order of any court of this
6 state, cease in all respects to be trustee of the trust and a successor trustee shall thereupon
7 succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument
8 does not provide for a successor trustee and the trust would otherwise be without a trustee, the
9 court, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon
10 such terms and conditions as it determines to be consistent with the purposes of the trust and
11 this section. Upon the trustee's ceasing to be trustee, the trustee has no power or authority other
12 than to convey the trust property to the successor trustee named in the trust instrument in
13 accordance with this section.

14 Section 11. That § 51A-6A-13 be amended to read as follows:

15 51A-6A-13. The business of any trust company shall be managed and controlled by its
16 governing board and includes the authority to provide for bonus payments, in addition to
17 ordinary compensation, for any of its officers and employees. The governing board shall consist
18 of not less than five nor more than twelve members, all of whom shall be elected by the owners
19 of the trust company at any regular annual meeting that is held during the first one hundred
20 twenty days of each calendar year. If the number of board members elected is less than twelve,
21 the number of board members may be increased so long as the total number does not exceed
22 twelve. If the number is increased, the first additional board members may be elected at a special
23 meeting of the owners. The board members shall be elected and any vacancies filled in the
24 manner as provided in the provisions regarding general corporations or limited liability

1 companies, as applicable. At all times one of the directors shall be a resident of this state and
2 at least ~~three-fourths~~ two-thirds of the directors shall be citizens of the United States. Any board
3 member of any trust company who becomes indebted to the trust company on any judgment
4 shall forfeit the position of board member and the vacancy shall be filled as provided by law.

5 Section 12. That § 21-22-14 be amended to read as follows:

6 21-22-14. Within ~~thirty~~ one hundred twenty days after the expiration of each year from the
7 commencement of court supervision over a trust, the trustee shall file a verified report showing
8 in detail ~~his~~ its receipts, disbursements, and acts during the year.

9 The trustee may at ~~his~~ its election make ~~his~~ its annual report during the ~~month of January~~
10 first four months of any year covering ~~his~~ its administration during the preceding year ending
11 December thirty-first.