

AN ACT

ENTITLED, An Act to revise certain provisions regarding the administration of trusts and estates.

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

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

51A-6A-31. The director shall examine each trust company at least once every thirty-six months or more frequently if the director considers it necessary to make a full and careful examination and inquiry into the condition of the affairs of the trust company. For purposes of the examination, the director may administer oaths and examine under oath the board members, officers, employees, and agents of any trust company. The examination shall be reduced to writing by the person making it, and the person's reports shall contain a full, true, and careful statement of the condition of the trust company. The director, in lieu of making a direct examination and inquiry at the trust company office, may examine the trust company in whole or in part by examining the trust company records or documents off-site. For an examination conducted wholly or partially off-site, the director may require production of any records or documents of the trust company at the director's office. The director shall provide a copy of the written examination report to the governing board of the trust company. Neither the director nor any employee of the Division of Banking may have any ownership interest in a trust company.

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

The director may enter into cooperative, coordinating, and information-sharing agreements with any other supervisory agency or any organization affiliated with or representing one or more supervisory agencies with respect to the periodic examination or other supervision of any trust company or out-of-state trust institution, and the director may accept such agency's or organization's

report of examination or investigation in lieu of conducting an examination or investigation.

Section 2. 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 shall be two hundred thousand dollars. The commission may require that the trust company have more capital than the amount specified if the commission 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 surety bond, fidelity bond, director's and officer's liability insurance policy, or all or any of the foregoing as the director may determine. The bond or insurance shall be in an amount of not less than one million dollars. Any bond or insurance required to be secured by a trust company shall provide that the 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 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 for authority to do business has been submitted to and approved by the commission. The commission shall approve or disapprove the establishment of any trust company and the location of its principal office. The commission shall prescribe the form for making an application, and any

application made to the commission shall contain such information as it requires. The applicant may, with the approval of the director, designate confidential information contained in its application that is not subject to disclosure except in accordance with §§ 51A-6A-39 and 51A-6A-46.2. The commission may not approve any application until the director first investigates and examines the application and the applicants. All proceedings before the commission on any application shall be held in conformance with chapter 1-26.

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

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

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

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

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

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

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

55-16-5. Any individual may serve as a fiduciary described in subdivision 55-1B-1(4), notwithstanding that such individual is the transferor of the qualified disposition, but such an individual may not otherwise serve as a fiduciary of a trust that is a qualified disposition except with respect to the retention of the veto right permitted by subdivision 55-16-2(2).

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

21-22-17. Notice of all hearings on all reports of the trustee and on all petitions filed shall be given as provided in this chapter. The court shall fix the time and place of the hearing. Notice of the time and place of the hearing, along with the nature of the hearing, shall be given as provided in this chapter. When the hearing is on an account of the trustee a copy of the account shall be served with the notice.

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

21-56-1. Wherever a provision is made in this title for the fixing of a time and place of hearing or the issuance of a notice, a judge or clerk of courts may fix the time and place for the hearing. The notice may be signed by the judge, the clerk of courts, or the attorney for the petitioner.

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

55-5-8. The trustee shall diversify the investments of the trust unless, under the circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of

the trust not to diversify. Regardless of concentration or lack of diversification, the trustee need not diversify if the trust instrument allows or directs retention of assets forming part of the trust corpus.

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

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

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

51A-6A-13. The business of any trust company shall be managed and controlled by its governing board and includes the authority to provide for bonus payments, in addition to ordinary compensation, for any of its officers and employees. The governing board shall consist of not less than five nor more than twelve members, all of whom shall be elected by the owners of the trust company at any regular annual meeting that is held during the first one hundred twenty days of each calendar year. If the number of board members elected is less than twelve, the number of board members may be increased so long as the total number does not exceed twelve. If the number is increased, the first additional board members may be elected at a special meeting of the owners. The

board members shall be elected and any vacancies filled in the manner as provided in the provisions regarding general corporations or limited liability companies, as applicable. At all times one of the directors shall be a resident of this state and at least two-thirds of the directors shall be citizens of the United States. Any board member of any trust company who becomes indebted to the trust company on any judgment shall forfeit the position of board member and the vacancy shall be filled as provided by law.

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

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

The trustee may at its election make its annual report during the first four months of any year covering its administration during the preceding year ending December thirty-first.

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I certify that the attached Act
originated in the
SENATE as Bill No. 68

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 68
File No. _____
Chapter No. _____

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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