

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

319P0402

SENATE BILL NO. 85

Introduced by: Senator Knudson and Representative Cutler

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the trust business in
2 banks and the trust company business.

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

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

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

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

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

14 51A-6-16. Upon finding that the trust company has been duly authorized to commence the
15 business for which it is organized ~~by the commission~~ in this state, or by the comptroller of the



1 currency; if the trust company is affiliated with a national bank, and that it has made the deposit
2 required by § 51A-5-4, the circuit court shall enter an order substituting the trust company in
3 every fiduciary capacity for a specified affiliated bank, except as may be otherwise specified in
4 the application. Upon entry of ~~such~~ the order, the trust company shall, without further act, be
5 substituted in every such fiduciary capacity, and ~~such~~ the substitution may be evidenced by
6 filing a copy of the order with the register of deeds in any county of this state.

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. No trust company may be incorporated or~~
4 ~~organized under the laws of this state or transact trust company business in this state until the~~
5 ~~application for its incorporation or organization and application or authority to do business and~~
6 ~~the location of its principal office have been submitted to and approved under the same~~
7 ~~procedure for bank applications as provided in § 51A-2-16, except that conditions for~~
8 ~~considering an application involving a trust company shall be as set forth in § 51A-6A-5. The~~
9 ~~director shall prescribe the form for making an application and any application submitted shall~~
10 ~~contain such information as required. The applicant may, with approval of the director,~~
11 ~~designate confidential information.~~

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

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

21 51A-6A-5. ~~Upon the filing of an application with the commission, the director shall make~~
22 ~~a careful examination and investigation concerning the following conditions:~~

- 23 ~~— (1) — The financial standing, general business experience, and character of the organizers~~
24 ~~and incorporators;~~

1 ~~—(2) The character, qualifications, and experience of the officers of the proposed trust~~
2 ~~company;~~

3 ~~—(3) The public need for the proposed trust company in the community where the trust~~
4 ~~company has proposed to locate and whether existing banks or trust companies are~~
5 ~~meeting the need; and~~

6 ~~—(4) The prospects for success of the proposed trust company.~~

7 ~~—If the commission determines any of these conditions unfavorable to the applicants, the~~
8 ~~application shall be disapproved, but if not, then the application shall be approved. In ruling on~~
9 ~~an application required under this chapter, the director or the commission, as the case may be,~~
10 ~~shall consider the following:~~

11 (1) The financial standing, general business experience, and character of the organizers
12 or incorporators of the applicant;

13 (2) The character, qualifications, and experience of the officers of the applicant;

14 (3) The applicant's ability to serve the community or clients as described in the
15 application; and

16 (4) The prospects for success of the proposed trust company.

17 In any hearing on the application before the commission, the director shall submit to the
18 commission for its consideration the director's findings with respect to the above conditions
19 together with all other pertinent information in the director's possession. If the director or the
20 commission, as the case may be, determines any of these conditions unfavorable to the
21 applicant, then the application shall be disapproved, but if not, then the application shall be
22 approved. Any proceeding before the commission on an application shall be held in
23 conformance with chapter 1-26.

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

1 51A-6A-7. Any ~~five~~ three or more persons may organize a trust company and make and file
2 articles as provided by the laws of this state. No trust company may be organized or
3 incorporated to engage in business as such until the articles have been submitted to and ~~have~~
4 ~~been approved by the commission~~ in accordance with § 51A-6A-4. The name selected for the
5 trust company may not be the name of any other trust company doing business in the state, and
6 the ~~commission~~ director shall accept or reject the name. However, the approval of a trust
7 company name by the ~~commission~~ director may not supersede any person's rights pursuant to
8 state or federal trademark law. The articles, in addition to any other information required by law,
9 shall state:

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

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

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

19 51A-6A-9. The existence of any trust company shall date from the filing of its articles from
20 which time it shall have and may exercise the incidental powers conferred by law upon
21 corporations or limited liability companies, as applicable. However, no trust company may
22 transact any business except the election of officers, the taking and approving of their official
23 bonds, the receipts of payment upon stock subscriptions, and other business incidental to its
24 organization, until it has secured the required approval ~~of the commission~~ and the authorization

1 of the director to commence business.

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

3 51A-6A-10. When the capital of any trust company is paid in, the president or cashier shall
4 transmit to the director a verified statement showing the names and addresses of all owners, the
5 amount of stock or units each subscribed, and the amount paid in by each. The director shall
6 ~~examine~~ review each trust company ~~especially~~ as to the amount of money paid in for capital,
7 surplus, and undivided profits; by whom the amounts were paid, the amount of capital stock or
8 units owned in good faith by each owner, and ~~generally~~ whether the trust company has complied
9 with the provisions of law. ~~The director shall charge the examination fee as established by rule~~
10 ~~pursuant to chapter 1-26.~~ If the director ~~finds from the examination~~ determines that the trust
11 company has been organized as provided by law, has complied with the provisions of law, and
12 has secured the preliminary required approval ~~of the director as authorized, or the approval of~~
13 ~~the commission~~, the director shall issue a certificate showing that the trust company has been
14 organized and its capital paid in as required by law and that the trust company is authorized to
15 transact trust business as provided by law.

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

17 51A-6A-19. For purposes of this section, the capital of a trust company is the total of the
18 aggregate par value of its outstanding shares of capital stock or ownership units, its surplus, and
19 its undivided profits. The minimum capital of a trust company ~~shall be~~ is two hundred thousand
20 dollars. ~~The commission~~ director may require that the trust company have more capital than the
21 amount specified if the ~~commission~~ director determines that the amount and character of the
22 anticipated business of the trust company and the safety of the customers so require. This
23 chapter recognizes that capital for a trust company serves a different purpose than does capital
24 for a bank. It is not intended that capital requirements for trust companies be judged by the same

1 standards as banks. Basic protection for fiduciary clients of a trust company shall be provided
2 by the purchase of a ~~surety bond~~, fidelity bond; and a director's and officer's liability insurance
3 policy; ~~or all or any of the foregoing as the director may determine~~. The bond ~~or~~ and insurance
4 shall be in an amount of not less than one million dollars each. ~~Any~~ The bond ~~or~~ and insurance
5 required to be secured by a trust company shall provide that ~~the~~ any bonding or insurance
6 company providing the bond or insurance coverage shall give at least ninety days notice of
7 cancellation or renewal of the bond or insurance policy to the trust company and to the director.
8 Except as may be provided elsewhere in this chapter, no trust company may reduce voluntarily
9 its capital stock or ownership units or surplus below the amount required in this section.

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

11 51A-6A-39. All information the director generates in making an investigation or
12 examination of a state trust company ~~shall be~~ is confidential ~~information~~. All confidential
13 information ~~shall be~~ is the property of the state and is not subject to disclosure except upon the
14 written approval of the director. The director shall give ten days' prior written notice of intent
15 to disclose confidential information to the affected trust company. Any trust company which
16 receives a notice may object to the disclosure of the confidential information and shall be
17 afforded the right to a hearing in accordance with the provisions of chapter 1-26. If a trust
18 company requests a hearing, the director may not reveal confidential information prior to the
19 conclusion of the hearing and a ruling. Disclosure of confidential information shall be made
20 only to formal regulatory bodies ~~of this state~~ which clearly have a need for the confidential
21 information. Prior to dissemination of any confidential information, the director shall require
22 a written agreement not to reveal the confidential information by the party receiving the
23 confidential information. In no event may the director disclose confidential information to the
24 general public, any competitor, or any potential competitor of a trust company.

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

2 51A-6A-54. No trust company incorporated under the laws of this state may change its place
3 of business, from one city or town to another or from one location to another within the same
4 city or town, without the prior approval of the ~~commission~~ director. Any trust company desiring
5 to change its place of business shall file a written application with the ~~commission~~ director in
6 the form and containing the information as the ~~commission~~ director requires. The ~~commission~~
7 director shall examine and investigate the application, ~~inquire into the public necessity for the~~
8 ~~trust company in the community in which it is proposed to locate,~~ and approve or disapprove
9 the application. The expenses of the examination and investigation shall be paid by the trust
10 company.

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

12 51A-6A-58. After first applying for and obtaining the approval of the ~~commission~~ director,
13 one or more trust service offices may be established and operated by a trust company
14 incorporated under the laws of this state or by an out-of-state trust institution, if and to the
15 extent that the state, territory, or district in which the out-of-state trust institution is chartered
16 or licensed to engage in a trust company business grants authority for a trust company organized
17 and doing business under the laws of this state to establish an office in that state, territory, or
18 district. An application to establish and operate a trust service office or to relocate an existing
19 trust service office shall be ~~in the form and contain the information as the director shall require.~~
20 ~~The application shall include an affidavit of publication of notice that applicant trust company~~
21 ~~or out-of-state institution intends to file an application to establish a trust service office or~~
22 ~~relocate an existing trust service office. This notice shall be published in a newspaper of general~~
23 ~~circulation in the county where the applicant trust company or out-of-state institution proposes~~
24 ~~to locate the trust service office. The notice shall be in the form prescribed by the commission~~

1 ~~and at a minimum shall contain the name and address of the applicant trust company or out-of-~~
2 ~~state institution, the location of the proposed trust service office, a solicitation for written~~
3 ~~comments concerning the proposed trust service office to be submitted to the commission, and~~
4 ~~provide for a comment period of not less than ten days prior to the commission's final~~
5 ~~consideration of the application submitted and approved in the manner set forth in § 51A-6A-4.~~

6 A trust company may establish a trust service office in another state, territory, or district and
7 may conduct any activities at that office that are permissible for a trust company under the laws
8 of that state, territory, or district subject to the laws of this state and subject to the rules, orders,
9 or declaratory rules of the commission or the director. ~~However, a trust company need not~~
10 ~~comply with the publication requirements of this section if opening a trust service office in~~
11 ~~another state, territory, or district.~~

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

13 ~~—51A-6A-59. If there is any written objection to an application filed pursuant to § 51A-6A-58~~
14 ~~that is filed with the commission within sixty days after receipt of the application, the~~
15 ~~commission shall hold a hearing in the county in which the applicant trust company seeks to~~
16 ~~establish and operate a trust service office. If there is no written objection filed with the~~
17 ~~commission within sixty days, the commission may hold a hearing on the application in the~~
18 ~~county. Notice of the time, date, and place of the hearing, if one is to be held, shall be published~~
19 ~~in a newspaper of general circulation in the county by the trust company seeking to establish and~~
20 ~~operate the trust service office not less than ten days or more than thirty days before the date of~~
21 ~~the hearing. An affidavit of publication shall be filed with the director. Not less than ten days~~
22 ~~or more than thirty days before the date of the hearing, the director shall give notice of the time,~~
23 ~~date, and place of the hearing by registered or certified mail to all banks and trust companies~~
24 ~~having their principal place of business, branch banks, or trust service offices in the county in~~

1 ~~which the applicant trust company seeks to locate a trust service office. At the hearing, any~~
2 ~~interested person shall be allowed to present written and oral evidence to the commission in~~
3 ~~support of or in opposition to the application. Upon completion of a transcript of the testimony~~
4 ~~given at the hearing, the transcript shall be filed in the office of the director and copies shall be~~
5 ~~furnished to the members of the commission not less than fourteen days prior to the meeting of~~
6 ~~the commission at which the application will be considered.~~

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

8 ~~51A-6A-60. The commission shall approve or disapprove the application within ninety days~~
9 ~~after consideration of the application and the evidence gathered during the commission's~~
10 ~~investigation. The application shall be granted only if the commission finds that:~~

11 ~~(1) There is or will be at the time the trust service office is opened the need for the trust~~
12 ~~company in the community to be served by it;~~

13 ~~(2) There is a reasonable probability of usefulness and success of the proposed trust~~
14 ~~service office;~~

15 ~~(3) The applicant trust company's financial history and condition is sound; and~~

16 ~~(4) The proposed trust service office can be established without undue injury to properly~~
17 ~~conducted existing banks or trust companies.~~

18 ~~Any final action of the commission approving or disapproving an application is subject to~~
19 ~~review in accordance with chapter 1-26 upon the petition of any adversely affected or aggrieved~~
20 ~~person who appeared and offered evidence at the hearing upon the application.~~

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

22 51A-6A-65. Any state bank chartered under Title 51A which exercises only trust powers and
23 which has never accepted deposits may make application to the ~~commission~~ director to
24 reorganize as a trust company under chapter 51A-6A. An application for conversion from a state

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

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

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