

Please Support Senate Bill ???

An Act to revise various provisions related to bank trust departments and trust companies.

What HB 1015 Does:

The bill will consolidate three chapters of South Dakota law dealing with bank trust departments and trust companies into two chapters and in the process will remove redundancy and reduce confusion.

Summary

South Dakota law currently provides three chapters in Title 51A dealing with bank trust departments and trust companies. One of those chapters, 51A-6, has gone unused for many years and leads to some confusion regarding its application. The objective of this bill is to reduce confusion and redundancy by repealing chapter 51A-6, removing references to trust companies in chapter 51A-5, and cleaning up chapter 51A-6A.

Changes in Chapter 51A-5 Bank Trust Departments (Section 1-16):

- Removes references to trust companies
- Updates and clarifies various cross-references
- Repeals unused and outdated trust service office structure

Repeal of Chapter 51A-6 Trust Companies (Sections 17-31)

- This chapter of law has gone largely unused since adopted in 1976
- Provided for the creation of trust companies by banks and bank holding companies only
- Very little supervisory structure, operating guidance, or limitations were provided
- Two useful provisions in this chapter will be carried forward in sections 33 & 34

Updates to Chapter 51A-6A Creation of Trust Companies (Sections 32-36)

- Updates reference in regulated lender definition
- A new section applying corporate and LLC law to trust companies (from 51A-6-6)
- A new section limiting trust company activity (from 51A-6-12)
- Repeals section previously used to convert non-depository banks to trust companies as the last non-depository bank converted to a 51A-6A trust company in 2012

The Department of Labor and Regulation asks for your support of SB ???.



2021 South Dakota Legislature

House Bill

Requested by: at the request of the Department of Labor and Regulation

1 **An Act to revise various provisions related to bank trust departments and trust**
 2 **companies.**

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

4 **Section 1.** That § 51A-5-1.1 be AMENDED.

5 **51A-5-1.1. Powers of banks engaging in trust business.**

6 Banks engaging in the trust business pursuant to this chapter have all powers
 7 necessary and incidental to carrying on the trust business, including:

- 8 (1) Acting as agent, custodian, or attorney-in-fact for any person, and, in such capacity,
 9 taking and holding property on deposit for safekeeping and acting as general or
 10 special agent or attorney-in-fact in the acquisition, management, sale, assignment,
 11 transfer, encumbrance, conveyance, or other disposition of property, in the
 12 collection or disbursement of income from or principal of property and, generally in
 13 any matter incidental to any of the foregoing;
- 14 (2) Acting as registrar or transfer agent for any corporation, partnership, association,
 15 municipality, state, or public authority, and in such capacity, receiving and
 16 disbursing money, transferring, registering, and countersigning certificates of stock,
 17 bonds or other evidences of indebtedness or securities and performing any and all
 18 acts which may be incidental thereto;
- 19 (3) Acting as trustee or fiduciary under any mortgage or bond issued by a person;
- 20 (4) Acting as trustee or fiduciary under any trust established by a person;
- 21 (5) Acting as fiduciary, assignee for the benefit of creditors, receiver or trustee under
 22 or pursuant to the order or direction of any court or public official of competent
 23 jurisdiction;
- 24 (6) Acting as fiduciary, guardian, conservator, assignee, or receiver of the estate of any
 25 person and as executor of the last will and testament or administrator, fiduciary or

- 1 personal representative of the estate of any deceased person when appointed by a
 2 court or public official of competent jurisdiction;
- 3 (7) Establishing and maintaining common trust funds or collective investment funds
 4 pursuant to the provisions of ~~§§ 55-6-1 to 55-6-7, inclusive~~ chapter 55-6; or
- 5 (8) Acting in any fiduciary capacity and performing any act as a fiduciary which a trust
 6 company organized under chapter ~~51A-6~~ 51A-6A may perform.

7 **Section 2.** That § 51A-5-7 be AMENDED.

8 **51A-5-7. Foreign bank to comply with requirements to act as fiduciary in**
 9 **state--Violation as misdemeanor.**

10 No bank ~~or trust company~~ organized and doing business under the laws of any
 11 state or territory of the United States of America, or of the District of Columbia, other than
 12 South Dakota, or a national bank doing business in any other state, territory, or district,
 13 may act in a fiduciary capacity in this state, except pursuant to the provisions of §§ 51A-
 14 5-8 to 51A-5-10, inclusive. A violation of this section is a Class 2 misdemeanor.

15 **Section 3.** That § 51A-5-8 be AMENDED.

16 **51A-5-8. Reciprocal privileges--Foreign bank acting as fiduciary.**

17 A bank ~~or trust company~~ organized and doing trust business under the laws of any
 18 state or territory of the United States of America, including the District of Columbia, other
 19 than South Dakota, and a national bank, duly authorized so to act, may be appointed and
 20 may serve in this state as trustee, whether of a corporation or personal trust, personal
 21 representative, guardian, conservator, or committee for an incompetent person, or in any
 22 other fiduciary capacity, whether the appointment is by will, deed, court order, or decree,
 23 or otherwise, when and to the extent that the state, territory, or district in which the bank
 24 ~~or trust company~~ is organized or has its principal place of business grants authority to
 25 serve in like fiduciary capacities to a bank ~~or trust company~~ organized and doing business
 26 under the laws of this state.

27 **Section 4.** That § 51A-5-9 be AMENDED.

28 **51A-5-9. Filing with Office of the Secretary of State by foreign bank acting**
 29 **as fiduciary--Designation as agent to receive process--Service of process.**

30 Before qualifying or serving in this state in any fiduciary capacity, as defined in
 31 § 51A-5-8, the bank ~~or trust company~~ shall file in the Office of the Secretary of State of

1 South Dakota, a copy of its charter certified by its secretary under its corporate seal, and
2 a power of attorney designating the secretary of state or the secretary of state's successor
3 in office as the person upon whom all notices and processes issued by any court of this
4 state may be served in any action or proceeding relating to any trust, estate, or matter
5 within this state in respect of which the bank ~~or trust company~~ is acting in any fiduciary
6 capacity with like effect as personal service on the bank ~~or trust company~~. The power of
7 attorney is irrevocable so long as any liability remains outstanding against the bank ~~or~~
8 ~~trust company~~ in this state. Service of process under this section may be made in the
9 manner provided in ~~§ 47-1A-1510~~ chapter 59-11.

10 **Section 5.** That § 51A-5-10 be AMENDED.

11 **51A-5-10. Establishment of place of business not permitted or prohibited by**
12 **filing requirements.**

13 The provisions of §§ 51A-5-7 to 51A-5-9, inclusive, may not be construed to
14 prohibit, permit, or affect in any other way, the right of a bank ~~or trust company~~, organized
15 and doing business under the laws of any other state, territory, or district than South
16 Dakota, including a national bank doing business in any other state, to establish in this
17 state a place of business, branch office, or agency for the conduct of business as a
18 fiduciary.

19 **Section 6.** That § 51A-5-14 be AMENDED.

20 **51A-5-14. Deposit of federally guaranteed securities with federal reserve**
21 **bank.**

22 Any bank ~~or trust company~~, when holding securities as custodian for a fiduciary
23 may deposit, or arrange for the deposit, with the federal reserve bank in its district of any
24 securities the principal and interest of which the United States or any department, agency,
25 or instrumentality of the United States has agreed to pay, or has guaranteed payment, to
26 be credited to one or more accounts on the books of the federal reserve bank in the name
27 of the bank ~~or trust company~~. Any account used for this purpose shall be designated as a
28 fiduciary or safekeeping account, and other similar securities may be credited. A bank ~~or~~
29 ~~trust company~~ depositing securities with a federal reserve bank is subject to such rules
30 and regulations with respect to the making and maintenance of such deposit, as, in the
31 case of state chartered institutions, the commission, and, in the case of national banking
32 associations, the comptroller of the currency, may from time to time issue.

1 **Section 7.** That § 51A-5-15 be AMENDED.

2 **51A-5-15. Records of depositor to show ownership of securities--Transfers**
3 **by book entries.**

4 The records of the bank ~~or trust company shall~~ must at all times show the
5 ownership of the securities held in such account. Ownership of, and other interests in, the
6 securities credited to such account may be transferred by entries on the books of ~~said~~ the
7 federal reserve bank without physical delivery of any securities.

8 **Section 8.** That § 51A-5-16 be AMENDED.

9 **51A-5-16. Custodian to certify deposited securities to fiduciary--Duty of**
10 **fiduciary.**

11 A bank ~~or trust company~~ acting as custodian for a fiduciary shall, on demand by
12 the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank ~~or~~
13 ~~trust company~~ with the federal reserve bank for the account of the fiduciary. A fiduciary
14 shall, on demand by any party to which it must account or on demand by the attorney for
15 the party, certify in writing to the party the securities deposited by the fiduciary with the
16 federal reserve bank for its account as the fiduciary.

17 **Section 9.** That § 51A-5-21 be AMENDED.

18 **51A-5-21. Deposit in clearing corporation of securities held as fiduciary or**
19 **custodian.**

20 Any fiduciary holding securities in its fiduciary capacity, any bank ~~or trust company~~
21 holding securities as a custodian or managing agent, and any bank ~~or trust company~~
22 holding securities as custodian for a fiduciary is authorized to deposit or arrange for the
23 deposit of the securities in a clearing corporation as defined in subdivision 57A-8-102(5).

24 **Section 10.** That § 51A-5-22 be AMENDED.

25 **51A-5-22. Ownership of stock in clearing corporation not required for**
26 **deposit of securities by fiduciary or custodian.**

27 Sections 51A-5-21 to 51A-5-24, inclusive, ~~shall~~ apply to any fiduciary holding
28 securities in its fiduciary capacity, and to any bank ~~or trust company~~ holding securities as
29 a custodian, managing agent or custodian for a fiduciary, regardless of the date of the
30 agreement, instrument, or court order by which it is appointed and regardless of whether

1 or not ~~such~~ the fiduciary, custodian, managing agent, or custodian for a fiduciary owns
2 capital stock of ~~such~~ the clearing corporation.

3 **Section 11.** That § 51A-5-24 be AMENDED.

4 **51A-5-24. Records of securities deposited in clearing corporation--Transfer**
5 **by book entry--Certification to interested party of securities held.**

6 The records of the fiduciary and the records of the bank ~~or trust company~~ acting
7 as custodian, as managing agent or as custodian for a fiduciary shall at all times show the
8 name of the party for whose account the securities are so deposited. Title to the securities
9 may be transferred by bookkeeping entry on the books of the clearing corporation without
10 physical delivery of certificates representing the securities. A bank ~~or trust company~~ so
11 depositing securities pursuant to § 51A-5-23 is subject to the rules as, in the case of state
12 chartered institutions, the commission and, in the case of national banking associations,
13 the comptroller of the currency may from time to time issue. A bank ~~or trust company~~
14 acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to
15 the fiduciary the securities so deposited by the bank ~~or trust company~~ in the clearing
16 corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to
17 a judicial proceeding for the settlement of the fiduciary's account or on demand by the
18 attorney for the party, certify in writing to the party the securities deposited by the
19 fiduciary in the clearing corporation for its account as the fiduciary.

20 **Section 12.** That § 51A-5-28 be REPEALED.

21 **51A-5-28. Trust service office defined.**

22 **Section 13.** That § 51A-5-29 be REPEALED.

23 **51A-5-29. Trust service office--Approvals for establishment.**

24 **Section 14.** That § 51A-5-30 be REPEALED.

25 **51A-5-30. Trust service office--Business allowed.**

26 **Section 15.** That § 51A-5-31 be REPEALED.

1 **51A-5-31. Trust service office--Agreement between institutions--Filing--**
2 **Notice--Contents--Substitution as fiduciary.**

3 **Section 16.** That § 51A-5-32 be REPEALED.

4 **51A-5-32. Trust service office--Persons to whom notice required--Denial of**
5 **substitution.**

6 **Section 17.** That § 51A-6-1 be REPEALED.

7 **51A-6-1. Definition of terms.**

8 **Section 18.** That § 51A-6-2 be REPEALED.

9 **51A-6-2. Organization of trust company by bank.**

10 **Section 19.** That § 51A-6-4 be REPEALED.

11 **51A-6-4. Contents of articles.**

12 **Section 20.** That § 51A-6-5 be REPEALED.

13 **51A-6-5. Name of trust company.**

14 **Section 21.** That § 51A-6-6 be REPEALED.

15 **51A-6-6. Corporation laws applied.**

16 **Section 22.** That § 51A-6-12 be REPEALED.

17 **51A-6-12. Permissible business of trust company.**

18 **Section 23.** That § 51A-6-14 be REPEALED.

19 **51A-6-14. Fiduciary capacity defined.**

20 **Section 24.** That § 51A-6-15 be REPEALED.

21 **51A-6-15. Application for substitution for affiliated bank in fiduciary**
22 **capacity--Joinder by banks--Ex parte.**

23 **Section 25.** That § 51A-6-16 be REPEALED.

1 **51A-6-16. Court order substituting trust company for affiliated bank--Filing**
2 **of copies.**

3 **Section 26.** That § 51A-6-17 be REPEALED.

4 **51A-6-17. Fiduciary designation of bank as designation of substituted trust**
5 **company--Exception.**

6 **Section 27.** That § 51A-6-18 be REPEALED.

7 **51A-6-18. Delivery of fiduciary assets by bank to trust company.**

8 **Section 28.** That § 51A-6-19 be REPEALED.

9 **51A-6-19. Joint accounting for period when substitution made.**

10 **Section 29.** That § 51A-6-20 be REPEALED.

11 **51A-6-20. Merger or consolidation of trust company with national banking**
12 **association--Notice to director--Vote and resolution of stockholders--Filing of**
13 **certificate.**

14 **Section 30.** That § 51A-6-21 be REPEALED.

15 **51A-6-21. Effect of merger or consolidation--Rights and obligations of**
16 **resulting national bank and trust company--Termination and surrender of**
17 **charter of merging or consolidating trust company.**

18 **Section 31.** That § 51A-6-22 be REPEALED.

19 **51A-6-22. Rights of dissenting stockholder--Receipt of cash value of shares-**
20 **-Appraisal.**

21 **Section 32.** That § 54-3-14 be AMENDED.

22 **54-3-14. Regulated lenders defined.**

23 The term "regulated lenders" as used in § 54-3-13 means:

- 24 (1) A bank organized pursuant to chapter 51A-1, et seq.;
- 25 (2) A bank organized pursuant to 12 U.S.C. § 21;
- 26 (3) A trust company organized pursuant to chapter ~~51A-6~~ 51A-6A;

- 1 (4) A savings and loan association organized pursuant to chapter 52-1, et seq.;
- 2 (5) A savings and loan association organized pursuant to 12 U.S.C. § 1464;
- 3 (6) Any wholly owned subsidiary of a state or federal bank or savings and loan
4 association which subsidiary is subject to examination by the comptroller of the
5 currency, or the federal reserve system, or the South Dakota Division of Banking,
6 or the federal home loan bank board and which subsidiary has been approved by
7 the United States secretary of housing and urban development for participation in
8 any mortgage insurance program under the National Housing Act;
- 9 (7) A federal land bank organized pursuant to 12 U.S.C. § 2011;
- 10 (8) A federal land bank association organized pursuant to 12 U.S.C. § 2031;
- 11 (9) A production credit association organized pursuant to 12 U.S.C. § 2091;
- 12 (10) A federal intermediate credit bank organized pursuant to 12 U.S.C. § 2071;
- 13 (11) An agricultural credit corporation or livestock loan company or its affiliate, the
14 principal business of which corporation is the extension of short and intermediate
15 term credit to farmers and ranchers;
- 16 (12) A federal credit union organized pursuant to 12 U.S.C. § 1753;
- 17 (13) A federal financing bank organized pursuant to 12 U.S.C. § 2283;
- 18 (14) A federal home loan bank organized pursuant to 12 U.S.C. § 1423, et seq.;
- 19 (15) A national consumer cooperative bank organized pursuant to 12 U.S.C. § 3011;
- 20 (16) A bank for cooperatives organized pursuant to 12 U.S.C. § 2121;
- 21 (17) Bank holding companies organized pursuant to 12 U.S.C. § 1841, et seq.;
- 22 (18) National Homeownership Foundation organized pursuant to 12 U.S.C. § 1701y;
- 23 (19) Farmers Home Administration as provided by 7 U.S.C. § 1981;
- 24 (20) Small Business Administration as provided by 15 U.S.C. § 633;
- 25 (21) Government National Mortgage Association and Federal National Mortgage
26 Association as provided by 12 U.S.C. § 1717;
- 27 (22) South Dakota Housing Development Authority as provided by chapter 11-11;
- 28 (23) Insurance companies, whether domestic or foreign, authorized to do business in
29 this state, and which as a part of their business engage in mortgage lending in this
30 state. However, § 54-3-13 does not exempt insurance companies from the
31 provisions of § 58-15-15.8; or
- 32 (24) Any wholly owned service corporation subsidiary of a domestic or foreign insurance
33 company, authorized to do business in this state, and which subsidiary is subject to
34 examination by the same insurance examiners as the parent company.

35 **Section 33.** That a NEW SECTION be added:

1 **51A-6A-7.1. Corporation laws applied.**

2 All provisions of law applicable to a corporation and a limited liability company are
3 applicable to a trust company, except where inconsistent with this chapter and the
4 provisions of this title, in which case this chapter and the provisions of this title govern.

5 **Section 34.** That a NEW SECTION be added:

6 **51A-6A-29.1. Permissible business of trust companies.**

7 A trust company may only carry on a trust company business, as provided in §
8 51A-6A-29, and such business as is incidental thereto.

9 **Section 35.** That § 51A-6A-65 be REPEALED.

10 **51A-6A-65. Conversion from state bank to trust company--Application--**
11 **Investigation--Regulation.**

12 **Section 36.** That § 51A-6A-66 be AMENDED.

13 **51A-6A-66. Exclusion of entity from chapters 51A-5 and 51A-6A--Governing**
14 **documents--Notice to director.**

15 An entity may be excluded from the provisions of chapters 51A-5, ~~51A-6~~, and 51A-
16 6A if:

- 17 (1) The entity is established for the exclusive purpose of acting as a trust protector,
18 investment trust advisor, or distribution trust advisor, as defined by § 55-1B-1, or
19 any combination of such purposes;
- 20 (2) The entity is acting in such capacity under a trust instrument ~~which~~that names a
21 South Dakota trust company, a South Dakota bank with trust powers, or a national
22 bank with trust powers as trustee;
- 23 (3) The entity is not engaged in trust company business with the general public as a
24 public trust company or with any family as a private trust company;
- 25 (4) The entity does not hold itself out as being in the business of acting as a fiduciary
26 for hire as either a public or private trust company;
- 27 (5) The entity files an annual report with the South Dakota secretary of state and
28 provides a copy to the Division of Banking;
- 29 (6) The entity agrees to be subject to examination by the Division of Banking at the
30 discretion of the director; and
- 31 (7) The entity does not use the word, trust, in the entity's name in any manner.

1 The governing documents of any such excluded entity ~~shall~~must limit its authorized
2 activities to the functions permitted to a trust protector, investment trust advisor, or
3 distribution trust advisor pursuant to chapter 55-1B, or any combination of such purposes,
4 and limit the performance of those functions with respect to a specifically named trust or
5 family of trusts.

6 An entity complying with this section shall notify the director of its existence, capacity
7 to act, and the name of the trustee for the trust or family of trusts.