

2021 South Dakota Legislature

Senate Bill 9**AMENDMENT 9C FOR THE INTRODUCED BILL**

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 state—Violation as~~
9 ~~misdemeanor.~~

10 ~~No bank or trust company organized and doing business under the laws of any state or~~
11 ~~territory of the United States of America, or of the District of Columbia, other than South~~
12 ~~Dakota, or a national bank doing business in any other state, territory, or district, may act in~~
13 ~~a fiduciary capacity in this state, except pursuant to the provisions of §§ 51A-5-8 to 51A-5-~~
14 ~~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 state or~~
18 ~~territory of the United States of America, including the District of Columbia, other than South~~
19 ~~Dakota, and a national bank, duly authorized so to act, may be appointed and may serve in~~
20 ~~this state as trustee, whether of a corporation or personal trust, personal representative,~~
21 ~~guardian, conservator, or committee for an incompetent person, or in any other fiduciary~~
22 ~~capacity, whether the appointment is by will, deed, court order, or decree, or otherwise, when~~
23 ~~and to the extent that the state, territory, or district in which the bank or trust company is~~
24 ~~organized or has its principal place of business grants authority to serve in like fiduciary~~
25 ~~capacities to a bank or trust company organized and doing business under the laws of this~~
26 ~~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 as fiduciary—~~
29 ~~Designation as agent to receive process—Service of process.~~

1 ~~Before qualifying or serving in this state in any fiduciary capacity, as defined in § 51A-5-8,~~
2 ~~the bank or trust company shall file in the Office of the Secretary of State of South Dakota, a~~
3 ~~copy of its charter certified by its secretary under its corporate seal, and a power of attorney~~
4 ~~designating the secretary of state or the secretary of state's successor in office as the person~~
5 ~~upon whom all notices and processes issued by any court of this state may be served in any~~
6 ~~action or proceeding relating to any trust, estate, or matter within this state in respect of~~
7 ~~which the bank or trust company is acting in any fiduciary capacity with like effect as personal~~
8 ~~service on the bank or trust company. The power of attorney is irrevocable so long as any~~
9 ~~liability remains outstanding against the bank or trust company in this state. Service of~~
10 ~~process under this section may be made in the manner provided in § 47-1A-1510 chapter 59-~~
11 ~~11.~~

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

13 ~~51A-5-10. Establishment of place of business not permitted or prohibited by filing~~
14 ~~requirements.~~

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

20 **Section 2.** That § 51A-5-14 be AMENDED.

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

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

1 case of state chartered institutions, the commission, and, in the case of national banking
2 associations, the comptroller of the currency, may from time to time issue.

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

4 **51A-5-15. Records of depositor to show ownership of securities--Transfers**
5 **by book entries.**

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

10 **Section 4.** That § 51A-5-16 be AMENDED.

11 **51A-5-16. Custodian to certify deposited securities to fiduciary--Duty of**
12 **fiduciary.**

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

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

20 **51A-5-21. Deposit in clearing corporation of securities held as fiduciary or**
21 **custodian.**

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

26 **Section 6.** That § 51A-5-22 be AMENDED.

27 **51A-5-22. Ownership of stock in clearing corporation not required for**
28 **deposit of securities by fiduciary or custodian.**

29 Sections 51A-5-21 to 51A-5-24, inclusive, shall apply to any fiduciary holding
30 securities in its fiduciary capacity, and to any bank ~~or trust company~~ holding securities as

1 a custodian, managing agent or custodian for a fiduciary, regardless of the date of the
2 agreement, instrument, or court order by which it is appointed and regardless of whether
3 or not ~~such the~~ fiduciary, custodian, managing agent, or custodian for a fiduciary owns
4 capital stock of ~~such the~~ clearing corporation.

5 **Section 7.** That § 51A-5-24 be AMENDED.

6 **51A-5-24. Records of securities deposited in clearing corporation--Transfer**
7 **by book entry--Certification to interested party of securities held.**

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

22 **Section 8.** That § 51A-5-28 be REPEALED.

23 **51A-5-28. Trust service office defined.**

24 **Section 9.** That § 51A-5-29 be REPEALED.

25 **51A-5-29. Trust service office--Approvals for establishment.**

26 **Section 10.** That § 51A-5-30 be REPEALED.

27 **51A-5-30. Trust service office--Business allowed.**

28 **Section 11.** 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 12.** That § 51A-5-32 be REPEALED.

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

6 **Section 13.** That § 51A-6-1 be REPEALED.

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

8 **Section 14.** That § 51A-6-2 be REPEALED.

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

10 **Section 15.** That § 51A-6-4 be REPEALED.

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

12 **Section 16.** That § 51A-6-5 be REPEALED.

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

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

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

16 **Section 18.** That § 51A-6-12 be REPEALED.

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

18 **Section 19.** That § 51A-6-14 be REPEALED.

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

20 **Section 20.** 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 21.** That § 51A-6-16 be REPEALED.

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

3 **Section 22.** That § 51A-6-17 be REPEALED.

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

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

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

8 **Section 24.** That § 51A-6-19 be REPEALED.

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

10 **Section 25.** 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 26.** 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 27.** That § 51A-6-22 be REPEALED.

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

21 **Section 28.** 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 29.** 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 30.** 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 31.** That § 51A-6A-65 be REPEALED.

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

12 **Section 32.** 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.