

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

400B0198

HOUSE BILL NO. 1033

Introduced by: The Committee on Commerce and Energy at the request of the Department
of Labor and Regulation

1 FOR AN ACT ENTITLED, An Act to revise provisions regarding transaction of business by
2 trust companies.

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

4 Section 1. That § 51A-6A-10 be amended to read:

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



1 Section 2. That § 51A-6A-19.2 be amended to read:

2 51A-6A-19.2. Before any trust company authorized by this title transacts any ~~such~~ trust
3 company business, the trust company shall pledge to the division, and maintain at all times,
4 investments for the security of the trust creditors of the trust company, including as a priority
5 claim costs incurred by the division in a receivership or liquidation of the trust company ~~in the~~
6 ~~event it~~ if the trust company should fail. The director shall determine the amount of the pledge
7 ~~shall be determined by the director~~ in an amount deemed appropriate to defray ~~such~~ the costs
8 incurred by the division in a receivership or liquidation of the trust company, but the amount
9 of the pledge may not be less than a market value of one hundred thousand dollars, ~~and may not~~
10 ~~nor~~ exceed five hundred thousand dollars for a private trust company or one million dollars for
11 a public trust company. Notwithstanding the maximum pledge amount allowed under this
12 section, the director may require a public trust company to maintain a pledge of greater than one
13 million dollars if the director finds that an increased pledge amount is required based upon
14 consideration of the factors in § 51A-6A-19.1. The director may authorize a reduction of any
15 previously established pledge, provided that no pledge may be less than a market value of one
16 hundred thousand dollars. All investments pledged to the division shall be held at a depository
17 institution in this state and all costs associated with pledging and holding ~~such~~ the investments
18 are the responsibility of the trust company.

19 The investments pledged to the division shall be of the same nature and quality as those
20 required for public funds ~~as provided in~~ under §§ 4-5-6, 4-5-6.1, and 4-5-6.2.

21 The commission may promulgate rules, pursuant to chapter 1-26, to establish additional
22 investment guidelines or investment options for purposes of the pledge required by this section.

23 In the event of a receivership of a trust company, the director may, without regard to
24 priorities, preferences, or adverse claims, reduce the pledged investments to cash and, as soon

1 as practicable, utilize the cash to defray the costs associated with the receivership.

2 Income from ~~such~~ the investments pledged shall belong to and be paid to the trust company
3 ~~as so~~ long as it the trust company continues to conduct its business in the ordinary course and
4 so long as authorized by the director.

5 If the director requires a trust company to increase its pledge, the director shall provide the
6 trust company with notice and an order setting forth the amount of the pledge. The proposed
7 effective date of ~~an~~ the order requiring an existing trust company to increase its setting forth the
8 amount of the pledge shall be stated in the order as on or after the thirty-first day after the date
9 of the ~~proposed~~ order. Unless the trust company requests a hearing before the commission in
10 writing before the proposed effective date of the ~~proposed~~ order, the order ~~becomes~~ is effective
11 and ~~is~~ final on the proposed effective date. Any hearing before the commission shall be held
12 pursuant to chapter 1-26.

13 Section 3. That § 51A-6A-24 be amended to read:

14 51A-6A-24. Any trust company in corporate form may issue preferred stock of one or more
15 classes in ~~such~~ amounts ~~as are~~ approved by the director. The holders of two-thirds of the
16 common stock of the trust company shall approve the issuance at a meeting held for that
17 purpose. Notice shall be given by registered mail to each stockholder at least five days before
18 the date of the meeting under this section. ~~No issue~~ An issuance of preferred stock is not valid
19 until the par value of all stock so issued is paid in. ~~No preferred~~ Preferred stock may be retired
20 ~~unless the common stock is increased in an amount equal to the amount of the preferred stock~~
21 retired only if the trust company is in compliance with the capital requirements under § 51A-6A-
22 19 following retirement of the preferred stock and if two-thirds of the holders of common stock
23 of the trust company and the director approve the retirement.

24 Section 4. That § 51A-6A-27 be amended to read:

1 51A-6A-27. ~~No trust company, during the time it continues in business, A trust company~~
2 may not permit to be withdrawn, in the form of dividends, any portion of its capital required
3 ~~pursuant to under §§ 51A-6A-19 and 51A-6A-19.1. The current dividends of any trust company~~
4 ~~shall be paid from undivided profits after deducting losses, to be ascertained by generally~~
5 ~~accepted accounting principles at the time of making the dividend.~~

6 Section 5. That § 51A-6A-28 be amended to read:

7 51A-6A-28. The governing board of any trust company may declare dividends from
8 undivided profits, ~~provided that~~ or surplus, if the trust company is in compliance with the capital
9 requirements ~~pursuant to of §§ 51A-6A-19 and 51A-6A-19.1 following payment of the dividend~~
10 and if the director approves any dividend to be paid from surplus.