

AN ACT

ENTITLED, An Act to revise provisions regarding transaction of business by trust companies.

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

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

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

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

51A-6A-19.2. Before any trust company authorized by this title transacts any trust company business, the trust company shall pledge to the division, and maintain at all times, investments for the security of the trust creditors of the trust company, including as a priority claim costs incurred by the division in a receivership or liquidation of the trust company if the trust company should fail. The director shall determine the amount of the pledge in an amount deemed appropriate to defray the costs incurred by the division in a receivership or liquidation of the trust company, but the amount of the pledge may not be less than a market value of one hundred thousand dollars, nor exceed five hundred thousand dollars for a private trust company or one million dollars for a public trust company. Notwithstanding the maximum pledge amount allowed under this section, the director may require a public trust company to maintain a pledge of greater than one million dollars

if the director finds that an increased pledge amount is required based upon consideration of the factors in § 51A-6A-19.1. The director may authorize a reduction of any previously established pledge, provided that no pledge may be less than a market value of one hundred thousand dollars. All investments pledged to the division shall be held at a depository institution in this state and all costs associated with pledging and holding the investments are the responsibility of the trust company.

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

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

In the event of a receivership of a trust company, the director may, without regard to priorities, preferences, or adverse claims, reduce the pledged investments to cash and, as soon as practicable, utilize the cash to defray the costs associated with the receivership.

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

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

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

51A-6A-24. Any trust company in corporate form may issue preferred stock of one or more classes in amounts approved by the director. The holders of two-thirds of the common stock of the trust company shall approve the issuance at a meeting held for that purpose. Notice shall be given by registered mail to each stockholder at least five days before the date of the meeting under this section. An issuance of preferred stock is not valid until the par value of all stock so issued is paid in. Preferred stock may be retired only if the trust company is in compliance with the capital requirements under § 51A-6A-19 following retirement of the preferred stock and if two-thirds of the holders of common stock of the trust company and the director approve the retirement.

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

51A-6A-27. A trust company may not permit to be withdrawn, in the form of dividends, any portion of its capital required under §§ 51A-6A-19 and 51A-6A-19.1.

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

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

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1033

\_\_\_\_\_  
Chief Clerk
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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1033  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor
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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

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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