



## 2021 South Dakota Legislature

# Senate Bill 9

SENATE COMMERCE AND ENERGY ENGROSSED

*Introduced by: The Committee on Commerce and Energy 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-5-14 be AMENDED.

8 **51A-5-14. Deposit of federally guaranteed securities with federal reserve**  
9 **bank.**

10 Any ~~bank or trust company~~, when holding securities as custodian for a fiduciary  
11 may deposit, or arrange for the deposit, with the federal reserve bank in its district of any  
12 securities the principal and interest of which the United States or any department, agency,  
13 or instrumentality of the United States has agreed to pay, or has guaranteed payment, to  
14 be credited to one or more accounts on the books of the federal reserve bank in the name  
15 of the ~~bank or trust company~~. Any account used for this purpose shall be designated as a  
16 fiduciary or safekeeping account, and other similar securities may be credited. A ~~bank or~~  
17 ~~trust company~~ depositing securities with a federal reserve bank is subject to such rules  
18 and regulations with respect to the making and maintenance of such deposit, as, in the  
19 case of state chartered institutions, the commission, and, in the case of national banking  
20 associations, the comptroller of the currency, may from time to time issue.

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

22 **51A-5-15. Records of depositor to show ownership of securities--Transfers**  
23 **by book entries.**

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

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

1           **51A-5-16. Custodian to certify deposited securities to fiduciary--Duty of**  
2           **fiduciary.**

3           A bank ~~or trust company~~ acting as custodian for a fiduciary shall, on demand by  
4           the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank ~~or~~  
5           ~~trust company~~ with the federal reserve bank for the account of the fiduciary. A fiduciary  
6           shall, on demand by any party to which it must account or on demand by the attorney for  
7           the party, certify in writing to the party the securities deposited by the fiduciary with the  
8           federal reserve bank for its account as the fiduciary.

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

10           **51A-5-21. Deposit in clearing corporation of securities held as fiduciary or**  
11           **custodian.**

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

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

17           **51A-5-22. Ownership of stock in clearing corporation not required for**  
18           **deposit of securities by fiduciary or custodian.**

19           Sections 51A-5-21 to 51A-5-24, inclusive, ~~shall~~ apply to any fiduciary holding  
20           securities in its fiduciary capacity, and to any bank ~~or trust company~~ holding securities as  
21           a custodian, managing agent or custodian for a fiduciary, regardless of the date of the  
22           agreement, instrument, or court order by which it is appointed and regardless of whether  
23           or not ~~such the~~ the fiduciary, custodian, managing agent, or custodian for a fiduciary owns  
24           capital stock of ~~such the~~ the clearing corporation.

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

26           **51A-5-24. Records of securities deposited in clearing corporation--Transfer**  
27           **by book entry--Certification to interested party of securities held.**

28           The records of the fiduciary and the records of the bank ~~or trust company~~ acting  
29           as custodian, as managing agent or as custodian for a fiduciary shall at all times show the  
30           name of the party for whose account the securities are so deposited. Title to the securities  
31           may be transferred by bookkeeping entry on the books of the clearing corporation without

1 physical delivery of certificates representing the securities. A bank ~~or trust company~~ so  
2 depositing securities pursuant to § 51A-5-23 is subject to the rules as, in the case of state  
3 chartered institutions, the commission and, in the case of national banking associations,  
4 the comptroller of the currency may from time to time issue. A bank ~~or trust company~~  
5 acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to  
6 the fiduciary the securities so deposited by the bank ~~or trust company~~ in the clearing  
7 corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to  
8 a judicial proceeding for the settlement of the fiduciary's account or on demand by the  
9 attorney for the party, certify in writing to the party the securities deposited by the  
10 fiduciary in the clearing corporation for its account as the fiduciary.

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

12 **51A-5-28. Trust service office defined.**

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

14 **51A-5-29. Trust service office--Approvals for establishment.**

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

16 **51A-5-30. Trust service office--Business allowed.**

17 **Section 11.** That § 51A-5-31 be REPEALED.

18 **51A-5-31. Trust service office--Agreement between institutions--Filing--**  
19 **Notice--Contents--Substitution as fiduciary.**

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

21 **51A-5-32. Trust service office--Persons to whom notice required--Denial of**  
22 **substitution.**

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

24 **51A-6-1. Definition of terms.**

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

1           **51A-6-2. Organization of trust company by bank.**

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

3           **51A-6-4. Contents of articles.**

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

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

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

7           **51A-6-6. Corporation laws applied.**

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

9           **51A-6-12. Permissible business of trust company.**

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

11           **51A-6-14. Fiduciary capacity defined.**

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

13           **51A-6-15. Application for substitution for affiliated bank in fiduciary**  
14           **capacity--Joinder by banks--Ex parte.**

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

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

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

19           **51A-6-17. Fiduciary designation of bank as designation of substituted trust**  
20           **company--Exception.**

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

22           **51A-6-18. Delivery of fiduciary assets by bank to trust company.**

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

1           **51A-6-19. Joint accounting for period when substitution made.**

2   **Section 25.** That § 51A-6-20 be REPEALED.

3           **51A-6-20. Merger or consolidation of trust company with national banking**  
 4           **association--Notice to director--Vote and resolution of stockholders--Filing of**  
 5           **certificate.**

6   **Section 26.** That § 51A-6-21 be REPEALED.

7           **51A-6-21. Effect of merger or consolidation--Rights and obligations of**  
 8           **resulting national bank and trust company--Termination and surrender of**  
 9           **charter of merging or consolidating trust company.**

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

11           **51A-6-22. Rights of dissenting stockholder--Receipt of cash value of shares-**  
 12           **-Appraisal.**

13 **Section 28.** That § 54-3-14 be AMENDED.

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

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

- 16           (1) A bank organized pursuant to chapter 51A-1, et seq.;
- 17           (2) A bank organized pursuant to 12 U.S.C. § 21;
- 18           (3) A trust company organized pursuant to chapter ~~51A-6~~ 51A-6A;
- 19           (4) A savings and loan association organized pursuant to chapter 52-1, et seq.;
- 20           (5) A savings and loan association organized pursuant to 12 U.S.C. § 1464;
- 21           (6) Any wholly owned subsidiary of a state or federal bank or savings and loan
- 22           association which subsidiary is subject to examination by the comptroller of the
- 23           currency, or the federal reserve system, or the South Dakota Division of Banking,
- 24           or the federal home loan bank board and which subsidiary has been approved by
- 25           the United States secretary of housing and urban development for participation in
- 26           any mortgage insurance program under the National Housing Act;
- 27           (7) A federal land bank organized pursuant to 12 U.S.C. § 2011;
- 28           (8) A federal land bank association organized pursuant to 12 U.S.C. § 2031;
- 29           (9) A production credit association organized pursuant to 12 U.S.C. § 2091;
- 30           (10) A federal intermediate credit bank organized pursuant to 12 U.S.C. § 2071;

- 1 (11) An agricultural credit corporation or livestock loan company or its affiliate, the  
2 principal business of which corporation is the extension of short and intermediate  
3 term credit to farmers and ranchers;
- 4 (12) A federal credit union organized pursuant to 12 U.S.C. § 1753;
- 5 (13) A federal financing bank organized pursuant to 12 U.S.C. § 2283;
- 6 (14) A federal home loan bank organized pursuant to 12 U.S.C. § 1423, et seq.;
- 7 (15) A national consumer cooperative bank organized pursuant to 12 U.S.C. § 3011;
- 8 (16) A bank for cooperatives organized pursuant to 12 U.S.C. § 2121;
- 9 (17) Bank holding companies organized pursuant to 12 U.S.C. § 1841, et seq.;
- 10 (18) National Homeownership Foundation organized pursuant to 12 U.S.C. § 1701y;
- 11 (19) Farmers Home Administration as provided by 7 U.S.C. § 1981;
- 12 (20) Small Business Administration as provided by 15 U.S.C. § 633;
- 13 (21) Government National Mortgage Association and Federal National Mortgage  
14 Association as provided by 12 U.S.C. § 1717;
- 15 (22) South Dakota Housing Development Authority as provided by chapter 11-11;
- 16 (23) Insurance companies, whether domestic or foreign, authorized to do business in  
17 this state, and which as a part of their business engage in mortgage lending in this  
18 state. However, § 54-3-13 does not exempt insurance companies from the  
19 provisions of § 58-15-15.8; or
- 20 (24) Any wholly owned service corporation subsidiary of a domestic or foreign insurance  
21 company, authorized to do business in this state, and which subsidiary is subject to  
22 examination by the same insurance examiners as the parent company.

23 **Section 29.** That a NEW SECTION be added:

24 **51A-6A-7.1. Corporation laws applied.**

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

28 **Section 30.** That a NEW SECTION be added:

29 **51A-6A-29.1. Permissible business of trust companies.**

30 A trust company may only carry on a trust company business, as provided in §  
31 51A-6A-29, and such business as is incidental thereto.

32 **Section 31.** That § 51A-6A-65 be REPEALED.

1           **51A-6A-65. Conversion from state bank to trust company--Application--**  
2           **Investigation--Regulation.**

3           **Section 32.** That § 51A-6A-66 be AMENDED.

4           **51A-6A-66. Exclusion of entity from chapters 51A-5 and 51A-6A--Governing**  
5           **documents--Notice to director.**

6           An entity may be excluded from the provisions of chapters 51A-5, ~~51A-6~~, and 51A-  
7           6A if:

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

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

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