

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

400W0190

## HOUSE BILL NO. 1025

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 certain provisions regarding banks and banking.

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

3 Section 1. That § 51A-3-4 be amended to read as follows:

4 51A-3-4. The total capital of ~~every bank~~ each newly organized ~~after July 1, 1982~~ bank shall  
5 be in ~~such an~~ an amount as the ~~commission considers~~ director determines adequate provided that  
6 the total capital required be at least six percent of the total projected assets of the bank during  
7 its first three years of operation.

8 Section 2. That § 51A-4-20.4 be amended to read as follows:

9 51A-4-20.4. A bank may make investments designed primarily to promote the public  
10 welfare, including the welfare of low and moderate income communities or families. A bank  
11 may make such investments directly or by purchasing interests in an entity primarily engaged  
12 in making such investments. No bank may make any such investment if the investment would  
13 expose the bank to unlimited liability. The ~~commission~~ director shall limit a bank's investments  
14 in any one project and a bank's aggregate investments under this section. A bank's aggregate  
15 investments under this section may not exceed an amount equal to the sum of five percent of



1 the bank's capital, surplus, and undivided profits, unless the ~~commission~~ director determines by  
2 order that the higher amount will not pose a significant risk to the bank and the bank is  
3 adequately capitalized. In no case may a bank's aggregate investments under this section exceed  
4 an amount equal to the sum of ten percent of the bank's capital stock actually paid in and  
5 unimpaired and ten percent of the bank's unimpaired surplus fund.

6 Section 3. That § 51A-4-44 be amended to read as follows:

7 51A-4-44. Terms used in § 51A-4-45 mean:

8 (1) "Financial institution," a National Banking Association, Federal Savings and Loan  
9 Association having its main office in this state, ~~or a bank, savings bank, or savings~~  
10 ~~and loan association~~ established and operated under the laws of this state;

11 (2) "Services," receiving deposits, renewing time deposits, closing loans, servicing loans,  
12 and receiving payments on loans and other obligations.

13 Section 4. That § 51A-4-45 be amended to read as follows:

14 51A-4-45. Unless prohibited by another provision of statute, a financial institution, known  
15 as the customer institution, may contract with another financial institution, known as the service  
16 institution, to grant the service institution the authority to render services to the depositors,  
17 borrowers, or other customers of the customer institution, after notice of the proposed contract  
18 is given to the director ~~of the State Banking Commission~~ and the director does not object to the  
19 contract within thirty days of the notice. A contract may include authority to conduct  
20 transactions at or through any principal office, branch, or detached facility of either financial  
21 institution which is party to the contract. For the purposes of this section, the service institution  
22 is not considered a branch of the customer institution. Nothing in this section or § 51A-4-44  
23 may be construed to apply to any loan production office as defined in subdivision 51A-1-2(18).

24 Section 5. That § 51A-5-21 be amended to read as follows:

1        51A-5-21. Any fiduciary holding securities in its fiduciary capacity, any bank or trust  
2 company holding securities as a custodian or managing agent, and any bank or trust company  
3 holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit  
4 of the securities in a clearing corporation; as defined in subdivision ~~57A-8-102(3)~~ 57A-8-102(5).

5        Section 6. That § 51A-6A-26 be amended to read as follows:

6        51A-6A-26. In accordance with normal business considerations and upon approval of  
7 owners owning two-thirds of the voting stock or ownership units of the trust company, the trust  
8 company may issue convertible or nonconvertible capital notes or debentures in such amounts  
9 ~~and under such~~ pursuant to terms and conditions as approved by the ~~commission~~ director.  
10 However, the principal amount of capital notes or debentures outstanding at any time may not  
11 exceed an amount equal to one hundred percent of the trust company's paid-in capital stock or  
12 ownership units plus fifty percent of the amount of its unimpaired surplus fund. Capital notes  
13 or debentures that are by their terms expressly subordinated to the prior payment in full of all  
14 liabilities of the trust company are part of the unimpaired capital funds of the trust company.

15        Section 7. That § 51A-6A-43 be amended to read as follows:

16        51A-6A-43. The owners of any insolvent trust company and its creditors may formulate a  
17 plan for the reorganization of the trust company while the trust company is in the charge of the  
18 director or a special assistant or a receiver at any time before a dividend has been paid. The  
19 creditors of the insolvent trust company may formulate a plan for the reorganization of the trust  
20 company. If the plan is subscribed to in writing by creditors having not less than eighty percent  
21 of the known claims against the trust company, ~~the commission approves the plan, and~~ a copy  
22 of the plan is filed with the director, and the director approves the plan, the plan is legal, valid,  
23 and binding upon all creditors of the insolvent trust company to the same extent and with the  
24 same effect as if all of the creditors had joined in the execution of the plan.

1 Section 8. That § 51A-14-5 be amended to read as follows:

2 51A-14-5. If a bank has been merged or consolidated with another bank or ~~its~~ the bank's  
3 assets have been purchased and ~~its~~ the bank's liabilities assumed by another bank, in any  
4 instance other than an emergency, within thirty days thereafter, the directors of ~~such~~ the bank  
5 shall institute proceedings to legally dissolve ~~its~~ the bank's charter in the same manner as  
6 provided for voluntary liquidation in chapter 51A-15; ~~provided that. However,~~ no notice need  
7 be given pursuant to ~~§ 51A-5-3~~ § 51A-15-3. Approval by the ~~commission~~ director of the merger,  
8 consolidation, or purchase of assets and assumption of liabilities constitutes approval of the  
9 voluntary liquidation as provided in § 51A-15-1; ~~but such.~~ However, the approval is subject to  
10 approval of the proposal to liquidate and dissolve by a vote of two-thirds of the outstanding  
11 stock of the liquidating bank at a meeting called for the purpose of considering such action.

12 Section 9. That § 51A-15-11 be amended to read as follows:

13 51A-15-11. After a hearing with three days' oral or written notice to a majority of the  
14 members of the board of directors, the director may, with the consent of a majority of the  
15 members of the commission, suspend all activities and take possession of the business and  
16 property of a bank ~~whenever he~~ if the director finds:

- 17 (1) ~~Its~~ The bank's capital is impaired or ~~it~~ the bank is otherwise in an unsound condition;
- 18 (2) ~~Its~~ The bank's business is being conducted in an unlawful or unsound manner;
- 19 (3) ~~It~~ The bank is unable to continue normal operations;
- 20 (4) ~~Its examination has been obstructed or impeded~~ The bank refuses to permit,  
21 obstructs, or impedes an examination as provided in § 51A-2-18;
- 22 (5) ~~It~~ The bank places its affairs and assets under ~~his~~ the control of the director;
- 23 (6) A parent corporation refuses to permit, obstructs, or impedes an examination as  
24 provided in § 51A-2-37;

1 (7) ~~It~~ The bank is insolvent; or

2 (8) ~~Its~~ The bank's insurance has been terminated pursuant to an action initiated by the  
3 Federal Deposit Insurance Corporation under 12 U.S.C. § 1818(a), as ~~amended~~ of  
4 January 1, 2015.

5 Section 10. That § 51A-15-14 be amended to read as follows:

6 51A-15-14. The director shall suspend the activities and take possession pursuant to § 51A-  
7 15-11 or 51A-15-21 by posting upon the premises a notice reciting that all activities shall be  
8 suspended and that the director is assuming possession pursuant to this chapter and the time, not  
9 earlier than the posting of the notice, when the director's possession ~~shall be~~ is deemed to  
10 commence. The notice shall also be ~~filed in the circuit court for the county in which the bank~~  
11 ~~is located~~ posted to the division's website. The director shall notify the appropriate federal  
12 reserve bank of ~~the district of taking an action to take~~ possession of any bank which is a member  
13 of the federal reserve system.