
DIVISION OF BANKING

1601 N. Harrison Avenue, Suite 1, Pierre, SD 57501
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MEMORANDUM

NUMBER: 20-012

DATE: June 12, 2014

TO: SOUTH DAKOTA TRUST COMPANIES AND BANK TRUST DEPARTMENTS

FROM: BRET AFDAHL, Director

RE: NEW TRUST LEGISLATION

The following is a summary of House Bill 1047 (HB 1047) which was introduced on behalf of the Governor's Task Force on Trust Administration Review and Reform and signed into law by Governor Dennis Daugaard. The amendments to existing law in HB 1047 will become effective on July 1, 2014. I would encourage you to review this bill in detail at your convenience at the following link: <http://legis.sd.gov/docs/legsession/2014/Bills/HB1047P.pdf>. If you would like additional information regarding this bill, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking (Division) at 605-773-3421.

Sections 4-22 – **For Trust Companies and Bank Trust Departments**

The following provisions of HB 1047 are technical amendments to Title 55 and Chapter 21-22 adopted to make the following changes:

- Clarifies that trustees may receive a release of liability from trust beneficiaries for duties, restrictions, and liabilities imposed elsewhere in the code in addition to those specifically identified in Chapter 55-4, Section 4;
- For purposes of life insurance trusts, adds the voting of proxies to the list of duties that a trustee is not required to carry out unless mandated by the terms of the trust or a court order, Section 5;
- Amendments to these sections will bring Chapter 21-22, governing court supervised trusts, on par with changes made to Title 55 for non-supervised trusts, Sections 6-16;
- Expands the default powers for investment trust advisors and clarifies that when an investment trust advisor directs a trustee to invest in or hold non-publically traded assets for the benefit of a grantor or beneficiaries, the investment trust advisor is responsible to provide the trustee with a value for such non-publically traded assets, Section 17;
- Clarifies that a trustee has a right to repayment of expenses from trust property related to the exercise of the trustee's powers as defined in the governing instrument, Section 18;
- Modifies certain disclosure requirements for affiliated investments if the authority to make such affiliated investments is expressly provided in the governing instrument or in a court order, Section 19;
- Requires notice to non-transferring spouses by transferring spouses for transfers of marital assets to asset protection trusts, Section 20;
- Clarifies that for purposes of self-settled trusts in Chapter 55-16, the creditor protections provided in SDCL 55-16-9 control in cases of conflicts of law with any uniform fraudulent transfer act, Section 21; and

- Clarifies the power to make qualified transfers via testamentary and intervivos powers of appointment, Section 22.

Sections 1-3 – For Trust Companies Only

The provisions of HB 1047 that amend Chapter 51A-6A were adopted to make the following changes:

- Clarify cross references in the Trust Company Act to Chapter 55-6 which governs the creation and administration of common trust funds, Sections 1 and 2; and
- Updates an additional examination authority section to be at the discretion of the Director instead of the Banking Commission, Section 3.