
DIVISION OF BANKING

1601 N. Harrison Avenue, Suite 1, Pierre, SD 57501
605-773-3421

MEMORANDUM

NUMBER: 20-024

DATE: June 19, 2019

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 1033 (HB 1033). HB 1033 was introduced and signed into law by Governor Kristi Noem. The amendments to existing law established in HB 1033 will become effective on July 1, 2019. I would encourage you to review this bill in detail at your convenience at the following link:

<http://sdlegislature.gov/docs/legsession/2019/Bills/HB1033ENR.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.

HB 1033

The following provisions of HB 1033 amend SDCL Chapter 51A-6A, and were adopted to make the following changes:

- Section 1 modifies language in SDCL 51A-6A-10 for clarity and consistency with the rest of chapter 51A-6A.
- Section 2 allows the Director to better protect the Division and the South Dakota trust industry from the potential financial costs associated with the failure of a trust company. All trust companies make a cash pledge to the Division to protect against the costs associated with their potential failure. These cash pledges are capped at different amounts for private and public trust companies. While these limits will remain in place for normal circumstances, in the event a public trust company or public trust company applicant presents unique or excessive risk to the Division, the Director will be authorized to increase the amount required to be pledged. Notice and opportunity for a hearing is provided for a pledge increase of an existing public trust company.
- Section 3 streamlines the process of retiring preferred stock issued by a trust company. Current law requires common stock to replace any preferred stock being retired. This section will allow a trust company to retire preferred stock if the trust company will be in compliance with capital requirements after the retirement and if the Director approves the retirement.
- Sections 4&5 modify a restriction on trust company dividends. The Director will be allowed to approve a dividend from surplus capital if the trust company will be in

compliance with its required minimum capital requirement after the dividend. For various reasons, some trust companies put in surplus capital at inception and after years of operation it can be desirable to dividend out some of this surplus capital back to ownership. However, current law prevents this from occurring in certain circumstances and this section will provide the Division more discretion to review and approve these requests on a case by case basis.