

State of South Dakota
Department of Labor and Regulation
Banking Commission

In re Petition for Declaratory Ruling of PayServices, Inc.)))	Findings of Fact, Conclusions of Law, and Declaratory Ruling
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On March 4, 2022, PayServices, Inc. filed a petition for declaratory ruling from the South Dakota State Banking Commission. On March 7, 2022, the State Banking Commission received PayServices' petition. The State Banking Commission, having received, reviewed, and analyzed the petition and South Dakota's applicable laws and rules, issues the following declaratory ruling:

Findings of Fact

1. On March 4, 2022, PayServices duly filed a petition seeking a declaratory ruling.
2. On March 7, 2022, the State Banking Commission received PayServices' petition.
3. PayServices asks the State Banking Commission to "permanently invoke[] the director's and the commission's discretion in the applicability of [ARSD § 20:07:10:05] as a condition of approval and waive[] the requirement for PayServices to possess Federal Deposit Insurance Corporation ("FDIC") of accounts prior to the acceptance of deposits."

Conclusions of Law

1. SDCL § 1-26-15 requires the State Banking Commission to provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any law or of any rule.
2. ARSD § 20:07:02:01 provides the form of petition for any party to seek a declaratory ruling as to any law or to any rule.
3. ARSD § 20:07:02:02 requires the State Banking Commission to issue a declaratory ruling within 30 days following receipt of a petition for declaratory ruling.
4. SDCL § 51A-4-8 provides that the State Banking Commission may require, by rule, South Dakota's state chartered banks to obtain federal deposit insurance for bank accounts.
5. ARSD 20:07:10:05, a State Banking Commission rule duly promulgated under SDCL Ch. 1-26, provides:

The director shall condition the approval of new banks . . . that prior to the acceptance of any deposits by a bank it must possess federal deposit insurance corporation insurance of accounts . . . and it must have the approval of the bank's application by the federal deposit insurance corporation or the appropriate federal reserve bank. Banks not wishing to accept deposits need not obtain deposit insurance, but in no case may such banks accept deposits without complying with the provisions of this section.

6. SDCL § 51A-2-13 provides that any State Banking Commission rule must be consistent with South Dakota law.

7. SDCL § 2-14-2.1 defines the term shall as used in South Dakota's laws and rules.

8. "As used in the South Dakota Codified Laws to direct any action, the term, shall, manifests a mandatory directive and does not confer any discretion in carrying out the action so directed." SDCL § 2-14-2.1

Declaratory Ruling

The Director of the South Dakota Division of Banking must condition the approval of a new bank, such as PayServices, that prior to the acceptance of any deposits by a bank, such as PayServices, it must possess federal deposit insurance corporation insurance of accounts.

Dated 3/29, 2022.

SOUTH DAKOTA BANKING COMMISSION

By  _____

Its Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Declaratory Ruling was served by regular, United States mail, postage prepaid, and e-mail as requested by petitioner, on March 30, 2022, upon:

Lionel Danenberg
Director for Petitioner
PayServices, Inc.
14061 Pacific Point Pl #204
Delray Beach, FL 33484

Bret Afdahl
Director
South Dakota Division of Banking
1601 N. Harrison Ave., Suite 1
Pierre, SD 57501

which addresses are the last addresses of the addressees known to the subscriber.

Wilbur Alan, PLLC

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