
DIVISION OF BANKING

217 ½ West Missouri, Pierre, SD 57501
605-773-3421

MEMORANDUM

NUMBER: 20-011

DATE: June 10, 2013

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 1056 (HB 1056) 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 and new laws established in HB 1056 will become effective on July 1, 2013. I would encourage you to review this bill in detail at your convenience at the following link: <http://legis.state.sd.us/sessions/2013/Bills/HB1056ENR.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 12-24 – **For Trust Companies and Bank Trust Departments**

The following provisions of HB 1056 that are technical amendments to Title 55 were adopted to make the following changes:

- Allow the no contest provisions in §§55-1-46 to 55-1-50 to apply to revocable and amendable trusts if such instruments are modified to this protection, Section 12;
- Amend the calculation for unitrusts to a set range of 3-5% to follow the sample provided by Treasury Regulation Section 1.643(b)(1), Section 13;
- Provide retroactive effect to the provision created during last year's legislative session that allows accumulation of trust income, Section 14;
- Allow interest on pecuniary devices at a specified rate of interest similar to that already provided in SD probate code, Section 15;
- Specify that decanting into special needs trusts is permitted and to clarify that this provision applies to all trusts administered under SD law, Section 16;
- Make the notice of a trust being decanted provided to beneficiaries discretionary instead of mandatory, Section 17;
- Clarify a reference to a section of the IRC that should refer to the regulations promulgated pursuant to the referenced IRC section and clarify that an irrevocable trust is not made revocable by granting the power to pay taxes, reimburse for taxes paid or expenses incurred in the administration of the estate, Section 18;
- Clean up exemption creditor language for purposes of completing a gift under IRC § 2036 & 2038, Section 19;
- Provide for the appointment or removal of a fiduciary in a trust instrument that is not included in the definition of trust advisor or distribution trust advisor, Section 20;
- Clarify the current trustee removal and replacement power, Section 21;

- Allow a trust to be governed and construed under the laws of another state but administered under SD law and still be considered a valid trust as provided in §55-3-39 and §55-3-40, Section 22;
- Change the claims period for third party trusts to be the same as that of asset protection trusts in §55-16-10, Section 23; and
- Amend the existing process for challenging the validity of a revocable trust to include an option to challenge a revocable trust before the settlor's death and to challenge an irrevocable trust that has been amended, Section 24.

Sections 1-11 – For Trust Companies Only

The provisions of HB 1056 that amend Chapter 51A-6A were adopted to make the following changes:

- Allow new employees, officers, and directors, at the discretion of the Director, to serve in their new role on a temporary basis pending the outcome of a criminal background investigation should a delay in processing occur, Section 1;
- Clarify that the amount pledged to the Division by each trust company is available to satisfy claims made by account holders and for costs incurred by the Division in cases of voluntary liquidations and receiverships, Section 2;
- Shift the burden to each trust company to notify the Director if the fidelity bond or insurance policy it is required to carry is cancelled or not renewed. The insurance company providing this coverage is required by SD insurance law to notify the insured trust company of any cancellation or nonrenewal, Section 3;
- Require notice to the Division of any change in ownership of 10% or more of a holding company which owns a majority of a trust company, Section 4;
- Create a new cause of action for the revocation of a trust company charter for lack of disclosure of a material issue in the application or for a change in material fact that occurs after an application is received, Section 5;
- Correct a cross reference, Section 6;
- Replace references to a management committee of an LLC with board of managers or board of members and repeal the term “trust service desk,” Section 7;
- Repeal authority to enter into a contracting trustee arrangement, Section 8-10; and
- Allow a qualifying special purpose entity to act in any of the listed capacities or any combination thereof as originally intended in prior legislation, Section 11.