

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

913Z0795

SENATE BILL NO. 184

Introduced by: Senator Kolbeck and Representative Rounds

1 FOR AN ACT ENTITLED, An Act to authorize the operation of business development banks.

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

3 Section 1. That § 51A-1-2 be amended to read:

4 51A-1-2. Terms used in this title mean:

5 (1) "Articles of incorporation," articles of incorporation for a bank organized by
6 incorporators as a corporation pursuant to chapter 47-1A and articles of organization
7 for a bank organized by organizers or members as a limited liability company
8 pursuant to chapter 47-34A;

9 (2) "Bank," any corporation or limited liability company, organized pursuant to chapter
10 47-34A, authorized under this title to engage in the business of banking ~~or in~~, the
11 combined business of a bank and trust company ~~or in~~, the combined business of a
12 bank with trust powers, or the business of banking as a business development bank
13 under sections 2 to 4 of this Act, inclusive;

14 (3) "Bank holding company," a bank holding company as defined in 12 U.S.C. 1841, as
15 amended as of January 1, 1988;



- 1 (4) "Banking," the business of receiving deposits, discounting commercial paper, or
2 buying and selling exchange, and any other activity authorized by this title;
- 3 (5) "Banking day," that part of any day on which a bank is open to the public for carrying
4 on substantially all of its banking functions;
- 5 (6) "Board of directors," board of directors for a bank organized by incorporators as a
6 corporation pursuant to chapter 47-1A and a manager for a manager-managed bank
7 or a member for a member-managed bank organized as a limited liability company
8 pursuant to chapter 47-34A;
- 9 (7) "Branch bank," a branch place of business maintained by a bank to conduct its
10 banking business;
- 11 (8) "Business development bank," a limited purpose bank operating in accordance with
12 sections 2 to 4 of this Act, inclusive;
- 13 (9) "By-laws," by-laws for a bank organized by incorporators as a corporation pursuant
14 to chapter 47-1A and operating agreement for a bank organized by organizers or
15 members as a limited liability company pursuant to chapter 47-34A;
- 16 ~~(9)~~(10) "Commission," the State Banking Commission;
- 17 ~~(10)~~(11) "Debt cancellation contract," a loan term or contractual arrangement
18 modifying loan terms under which a bank agrees to cancel all or part of a
19 customer's obligation to repay an extension of credit from the bank upon the
20 occurrence of a specified event. The contract may be separate from or a part
21 of other loan documents. The term, debt cancellation contract, does not
22 include loan payment deferral arrangements in which the triggering event is
23 the borrower's unilateral election to defer repayment, or the bank's unilateral
24 decision to allow a deferral of repayment;

1 ~~(11)~~(12) "Debt suspension contract," a loan term or contractual arrangement modifying
2 loan terms under which a bank agrees to suspend all or part of a customer's
3 obligation to repay an extension of credit from the bank upon the occurrence
4 of a specified event. The contract may be separate from or a part of other loan
5 documents. The term, debt suspension contract, does not include loan payment
6 deferral arrangements in which the triggering event is the borrower's unilateral
7 election to defer repayment, or the bank's unilateral decision to allow a
8 deferral of repayment.

9 ~~(12)~~(13) "Deputy director," the deputy director of the Division of Banking;

10 ~~(13)~~(14) "Director," the director of the Division of Banking;

11 ~~(14)~~(15) "Dividends," distributions for a corporation organized by incorporators as a
12 corporation pursuant to chapter 47-1A and distributions for a bank organized
13 by organizers or members as a limited liability company pursuant to chapter
14 47-34A.

15 ~~(15)~~(16) "Division," the Division of Banking of the Department of Labor and
16 Regulation;

17 ~~(16)~~(17) "Executive officer," every officer who participates or has authority to
18 participate, otherwise than in the capacity of a director, in major policy-
19 making functions of the bank, regardless of whether the officer has an official
20 title or whether the officer's title contains a designation of assistant and
21 regardless of whether the officer is serving without salary or other
22 compensation. The chairman of the board, the president, every vice-president,
23 the cashier, secretary, and treasurer of a bank are assumed to be executive
24 officers, unless, by resolution of the board of directors or by the bank's bylaws,

1 any such officer is excluded from participation in major policy-making
2 functions, otherwise than in the capacity of a director of the bank, and the
3 officer does not actually participate therein;

4 ~~(17)~~(18) "Fully defeased bonds or notes," obligations issued by any state, or municipal
5 or school district subdivision the repayment of which has been irrevocably
6 guaranteed by other securities which securities are issued by or are fully
7 guaranteed by the United States Government;

8 ~~(18)~~(19) "Loan production office," an office which is apart from its main bank or
9 branch which is staffed or controlled by a bank and is where loans are solicited
10 but are not approved or disbursed;

11 ~~(19)~~(20) "Mobile branch bank," a branch bank that does not have a single, permanent
12 site and uses a vehicle that travels to various locations to enable the public to
13 conduct banking business. A mobile branch bank may serve defined locations
14 on a regular schedule or may serve a defined area at varying times and
15 locations;

16 ~~(20)~~(21) "National bank," any corporation organized pursuant to 12 U.S.C. § 21, as
17 amended as of January 1, 1990;

18 ~~(21)~~(22) "Stock," shares for a bank organized by incorporators as a corporation
19 pursuant to chapter 47-1A and member equity for a bank organized as a
20 limited liability company pursuant to chapter 47-34A;

21 ~~(22)~~(23) "Stockholder," a shareholder of a bank organized by incorporators as a
22 corporation pursuant to chapter 47-1A and a member for a bank organized by
23 organizers or members as a member as a limited liability company pursuant
24 to chapter 47-34A.

1 Section 2. That the code be amended by adding a NEW SECTION to read:

2 The name of a business development bank shall include the term, bank, and the suffix, BDB,
3 but may not include the terms, savings, or trust.

4 Section 3. That the code be amended by adding a NEW SECTION to read:

5 A business development bank may:

6 (1) Extend a loan or other financing in an amount over five thousand dollars to be used
7 solely for commercial purposes to a business entity;

8 (2) As deemed necessary by the business development bank, require and obtain any form
9 of collateral or security interest in real or personal property to secure the loan or
10 financing under subdivision (1);

11 (3) Provide management consulting and counseling services to the business development
12 bank's customers either directly or indirectly through an affiliated or unaffiliated
13 business entity. The services provided under this subdivision may include financial,
14 economic, accounting, employee benefit, data processing, or any similar matter as
15 approved by the director;

16 (4) Accept savings and time deposits in any amount not less than one hundred thousand
17 dollars; and

18 (5) Exercise any other power that is related to, incidental to, or usual to the business of
19 banking and maintaining a corporate existence.

20 Section 4. That the code be amended by adding a NEW SECTION to read:

21 No business development bank may:

22 (1) Act as a fiduciary, including as an executor, administrator, guardian, conservator,
23 trustee by will or other instrument, receiver, or attorney-in-fact;

24 (2) Exercise or possess any trust powers otherwise available to a bank pursuant to the

- 1 provisions of chapter 51A-5;
- 2 (3) Extend a loan or other financing in any amount to be used for any non-commercial,
3 personal, family, or household purpose;
- 4 (4) Accept a deposit of any type other than savings and time deposits in an amount of
5 one hundred thousand dollars or greater or accept a public deposit as defined under
6 § 4-6A-1;
- 7 (5) Engage in the business of money transmission as defined in § 51A-17-1;
- 8 (6) Offer or provide any service for safe deposit box rental. For purposes of this
9 subdivision, the holding or controlling of collateral under subdivision (2) of section
10 3 of this Act is not a service for safe deposit box rental under this subdivision; or
- 11 (7) Establish more than one location open to the general public; or establish, maintain,
12 or operate any branch or detached drive-through facility otherwise permitted for a
13 bank under chapter 51A-7. Nothing in this subdivision prevents a business
14 development bank from owning or leasing real property for business purposes that
15 is closed to the general public.