

AN ACT

ENTITLED, An Act to revise certain provisions and delete certain obsolete provisions pertaining to the Department of Labor and Regulation.

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

Section 1. That § 36-21A-89 be amended to read as follows:

36-21A-89. The commission may promulgate rules pursuant to chapter 1-26 relating to the administration and enforcement of the provisions of this chapter in the following areas:

- (1) Procedures for conducting the commission's business;
- (2) Procedures and qualifications for application, minimum requirements for examination, procedures for the examination and the administration of the examination, the required score for passing the examination, and procedures for replacement of a license;
- (3) Requirements for dividing a commission with a broker in another state, requirements for application for licensure by reciprocity and the practice of a nonresident licensee in the state;
- (4) Procedures for application to provide classroom instruction or correspondence work for prelicensing education, qualifications of the instructors and facilities, and procedures for approving classroom instruction and correspondence work and for withdrawing the approval;
- (5) Procedures for disciplinary proceedings, including requirements for filing a complaint, dismissal of a complaint, informal and formal resolution of a complaint, formal complaint and answer requirements, final action and review, disqualification of a commission member from a hearing and authorization for per diem and mileage;
- (6) Procedures for declaratory rulings, petitions for rules and contested cases;
- (7) Requirements for a real estate auction and the requirements, duties and responsibilities

of an auctioneer;

- (8) Requirements for mortgage brokers, including areas such as trust accounts, record-keeping, written contracts, full disclosure and restrictions on chargeable costs and expenses;
- (9) Requirements for continuing education including procedures for granting a certificate of accreditation; notification of a material change in an approved course offering; suspension, revocation and denial of course approval; notice to students regarding the course and opportunity for comment; auditing; certificates of attendance; preregistration and limits on correspondence courses; and
- (10) Requirements for property managers, including areas such as trust accounts, auditing, contracts, disclosure, disciplinary matters, financial obligations and records, and property management accounting.

Section 2. That § 36-25-17.1 be amended to read as follows:

36-25-17.1. The commission may waive certain licensing requirements for an applicant in a rural area or a municipality of less than fifteen hundred population as shown by the last federal decennial census, if the applicant passes an examination given by the commission that demonstrates that the applicant knows the laws and rules governing plumbing. Any person registered under the provisions of this section shall be restricted to performing plumbing in a rural area or a municipality of less than fifteen hundred population. The commission may, by rules promulgated pursuant to chapter 1-26, provide for a license for applicants in a rural area or a municipality of less than fifteen hundred population.

Section 3. That § 36-25-22.1 be repealed.

Section 4. That § 51A-2-38 be repealed.

Section 5. That § 51A-2-39 be repealed.

Section 6. That § 51A-2-40 be repealed.

Section 7. That § 51A-2-41 be repealed.

Section 8. That § 51A-2-42 be repealed.

Section 9. That § 51A-2-43 be repealed.

Section 10. That § 51A-3-13 be amended to read as follows:

51A-3-13. The incorporators shall collect an amount equal to not less than ten percent of the subscription price of each share of stock subscribed for at the time such subscriptions are issued. If the application is disapproved by the director or commission, that portion of the moneys so collected remaining after the payment of the expenses incidental to such application shall be proportionally refunded to the subscribers.

Section 11. That § 51A-3-25 be amended to read as follows:

51A-3-25. For the purposes of application approval under § 51A-2-16, a change of control created by the acquisition of shares in satisfaction of a debt previously contracted in good faith or through testate or intestate succession, bona fide gift, or trust distribution does not require an application for change in control. The acquirer shall advise the director within thirty days after the acquisition and provide such information as the director may request.

For the purposes of this section, the term, control, means the power, directly or indirectly, to direct the management or policies of a bank or to vote twenty-five percent or more of any class of voting securities of a bank.

Section 12. That § 51A-3-29 be repealed.

Section 13. That § 51A-4-9 be amended to read as follows:

51A-4-9. Except as provided in §§ 51A-4-10 and 51A-4-41, a bank may lease, purchase, hold, and convey in its own name, or through investment in a corporation organized solely to lease such property to it, only the following real property:

- (1) That which it occupies or intends to occupy for the transaction of its business or which it partly so occupies and partly rents or leases to others;
- (2) That which is used for accommodation in the transaction of the bank's business, including parking, storage and preservation of records, and data processing facilities; or
- (3) That which is used for housing or recreation accommodations for attracting and retaining employees.

All such accommodations shall be of a reasonable nature.

The book value of a bank's premises may not exceed in the aggregate one hundred percent of the bank's capital stock and surplus. However, the director may authorize a larger investment, upon formal application and after an investigation, if the sound conduct of banking will not be adversely affected by the larger investment. For the purposes of this section, book value includes those amounts which are to be reported as premises and fixed assets according to the instructions for consolidated reports of condition filed with the division.

Section 14. That § 51A-4-15 be amended to read as follows:

51A-4-15. A bank may rediscount in good faith and endorse any of its negotiable paper. However, no bank may pledge any of its assets as collateral security for the payment thereof, except as required by rules of the federal reserve bank. The director may require such bank to repay any such rediscounts.

Section 15. That § 51A-4-45 be amended to read as follows:

51A-4-45. Unless prohibited by another provision of statute, a financial institution, known as the customer institution, may contract with another financial institution, known as the service institution, to grant the service institution the authority to render services to the depositors, borrowers, or other customers of the customer institution, after notice of the proposed contract is given to the director of the State Banking Commission and the director does not object to the contract within thirty days

of the notice. A contract may include authority to conduct transactions at or through any principal office, branch, or detached facility of either financial institution which is party to the contract. For the purposes of this section, the service institution is not considered a branch of the customer institution. Nothing in this section or § 51A-4-44 may be construed to apply to any loan production office as defined in subdivision 51A-1-2(18).

Section 16. That § 51A-6A-17 be amended to read as follows:

51A-6A-17. Except with the written consent of the director, no person may serve as a board member, officer, or key employee of a trust company who has been convicted of any felony or any crime involving fraud, dishonesty, or a breach of trust. Any trust company who willfully violates this prohibition is subject to a civil penalty of one thousand dollars for each day the violation continues. A civil penalty imposed pursuant to this section for a single violation may not exceed fifty thousand dollars. Any civil penalty imposed by the director under this section is subject to review by the commission in accordance with chapter 1-26.

As part of any application to obtain authority to transact business as a private trust company, the applicant shall obtain and provide for each proposed incorporator, organizer, board member, manager, officer, and key employee of the proposed company, as applicable, the results of an independent criminal background investigation acceptable to the director, and independent credit report from a consumer reporting agency as described in 15 U.S.C. 1681a(p) as of January 1, 2010, and a report of ongoing or pending litigation.

As part of any application to obtain authority to transact trust company business as a public trust company, each proposed incorporator, organizer, board member, manager, officer, and key employee, as applicable, shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the division shall submit completed fingerprint cards to the Division

of Criminal Investigation for purposes of conducting both the state and federal criminal background investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the division all information obtained as a result of the criminal background investigation. For any person described above who is not a citizen of the United States, the director may conduct an international background investigation or require the applicant or person to obtain and provide the results of an international background investigation acceptable to the director. The applicant shall also obtain and provide the results of an independent credit report from a consumer reporting agency as described in 15 U.S.C. 1681a(p) as of January 1, 2010, and a report of ongoing or pending litigation for each person as described above.

Prior to beginning employment with any trust company, each potential director, manager, member, officer, or key employee shall undergo the same investigation process as required above for new applicants. For purposes of this section, a key employee does not include an employee whose primary responsibilities are limited to clerical or support duties and officer does not include any person who is not involved in the ongoing policy making or management of the trust company.

Any trust company shall immediately notify the division of any material change in the background of any person subject to the background investigation process as described above.

The division may require a fingerprint-based state, federal, and international criminal background investigation, as applicable, for any director, officer, or employee, who is the subject of an investigation by the division. Failure to submit to or cooperate with the criminal background investigation is grounds for the denial of an application or may result in the revocation of a trust company's authority to transact trust company business.

The applicant or trust company, as the case may be, shall pay any fees or costs associated with the fingerprinting, background investigations, or reports required by this section. A person who has undergone a state, federal, or international background investigation required by this section, may,

at the discretion of the director, be allowed to fulfill this requirement for future trust company employment by sworn affidavit stating that there have been no material changes to the person's background.

Section 17. That § 51A-6A-20 be amended to read as follows:

51A-6A-20. All subscriptions to the stock or ownership units shall be paid in cash. If a trust company in corporate form reduces its common stock and issues preferred stock in lieu of the reduction, it may reduce the par value of the common stock in the proportion that the total amount of capital stock is reduced, but when the preferred stock is retired the par value of the common shares shall be restored.

Section 18. That § 51A-6A-24 be amended to read as follows:

51A-6A-24. Any trust company in corporate form may issue preferred stock of one or more classes in such amounts as are approved by the director. The holders of two-thirds of the common stock of the trust company shall approve the issuance at a meeting held for that purpose. Notice shall be given by registered mail to each stockholder at least five days before the date of the meeting. No issue of preferred stock is valid until the par value of all stock so issued is paid in. No preferred stock may be retired unless the common stock is increased in an amount equal to the amount of the preferred stock retired.

Section 19. That § 51A-6A-42 be amended to read as follows:

51A-6A-42. If it appears upon the examination of any trust company or from any report made to the director that any trust company is insolvent, the director shall take charge of the trust company and all of its property and assets. In so doing the director may appoint a special assistant to take charge temporarily of the affairs of the insolvent trust company until a receiver is appointed. The assistant shall qualify, give bond, and receive compensation the same as the regular examiner, but the compensation shall be paid by the insolvent trust company, or in case of the appointment of a

receiver, allowed by the court as costs in the case. No trust company may continue in the charge of a special assistant for a longer period than six months.

Section 20. That § 51A-6A-50 be amended to read as follows:

51A-6A-50. Before any trust company can merge, consolidate with, convert from a corporation to a limited liability company or from a limited liability company to a corporation under § 47-1A-950 or 47-1A-950.1, or transfer its assets and liabilities to another trust company or bank, it shall file with the director, certified copies of all proceedings of its governing board and owners relating to the merger, consolidation, conversion, or transfer. The owners' proceedings shall show that a majority of the owners voted in favor of the merger, consolidation, conversion, or transfer. The owners' proceedings shall contain a complete copy of the agreement made and entered into, with reference to the merger, consolidation, conversion, or transfer. Upon the filing of the owners' and governing board's proceedings, the director shall make an investigation to determine whether:

- (1) The interests of the clients, creditors, and owners of each are protected;
- (2) The merger, consolidation, conversion, or transfer is in the public interest; and
- (3) The merger, consolidation, conversion, or transfer is made for legitimate purposes.

The director's consent to or rejection of a merger, consolidation, conversion, or transfer shall be based upon the investigation. No merger, consolidation, conversion, or transfer may be made without the consent of the director. The expense of the investigation shall be paid by the persons filing the request.

Section 21. That § 51A-12-1 be amended to read as follows:

51A-12-1. This chapter applies to bank loans.

Section 22. That § 51A-14-1 be amended to read as follows:

51A-14-1. A bank authorized under this title may merge or consolidate with another state bank, national bank or savings and loan association organized pursuant to 12 U.S.C. § 1464 as amended

as of January 1, 1990. The provisions of §§ 51A-2-16 and 51A-3-7 to 51A-3-12, inclusive, govern applications for mergers and consolidations.

Section 23. That § 51A-14-2 be amended to read as follows:

51A-14-2. A bank may purchase the assets and assume the liabilities of another state bank, national bank or savings and loan association organized pursuant to 12 U.S.C. § 1464 as amended as of January 1, 1990. The provisions of §§ 51A-2-16 and 51A-3-7 to 51A-3-12, inclusive, govern such applications.

Section 24. That § 51A-14-4 be amended to read as follows:

51A-14-4. Any national bank, federal savings association, or federal savings bank that desires to take the necessary steps to effect dissolution as a national bank, a federal savings association or a federal savings bank with the federal regulatory authority having jurisdiction may make application to the director to reorganize as a state bank. An application for conversion to a state bank shall consist of a letter of intent signed by a majority of the institution's board of directors together with any additional information required by the director. The stockholders of the national bank, federal savings association, or federal savings bank shall make, execute, and acknowledge articles of incorporation as required by this title. Upon receipt of an application for approval of a conversion, the director shall conduct such investigation as he may deem necessary to ascertain whether:

- (1) The letter of intent and supporting items satisfy the requirements of this title;
- (2) The plan of conversion adequately protects the interests of depositors;
- (3) The requirements for a conversion under all applicable laws have been satisfied, and the resulting state bank would satisfy the requirements for banks authorized by this title; and
- (4) The resulting state bank will possess an adequate capital structure.

Upon filing and approval of such articles as provided by this title, and upon the issuance of a certificate of authority by the director as provided herein, the institution may transact business as a

state bank, and thereupon all assets, real and personal, of the dissolved national bank, federal savings association, or federal savings bank shall be vested in and become the property of the state bank.

Section 25. That § 51A-14-6 be amended to read as follows:

51A-14-6. If the director, pursuant to § 51A-15-21, or if the commission deems it necessary that a state bank, national bank, or savings and loan association organized pursuant to 12 U.S.C. § 1464 as amended as of January 1, 1990, be merged, consolidated, or its assets purchased and its liabilities assumed in order to protect the depositors and the public from unsound practices, and another bank is willing to merge, consolidate, or purchase the assets and assume the liabilities of such financial institution, the commission may declare that such merger, consolidation, or purchase of assets and assumption of liabilities shall constitute an emergency takeover. The commission may waive any requirement, whether by law or by rule, relative to required application materials, thoroughness of the director's investigation, and length of time before the commission may act. Nothing in this section limits in any way the rights of shareholders of either financial institution to approve the transaction and the manner required by state or federal law.

Section 26. That § 51A-15-14 be amended to read as follows:

51A-15-14. The director shall suspend the activities and take possession pursuant to § 51A-15-11 or 51A-15-21 by posting upon the premises a notice reciting that all activities shall be suspended and that the director is assuming possession pursuant to this chapter and the time, not earlier than the posting of the notice, when the director's possession shall be deemed to commence. The notice shall also be filed in the circuit court for the county in which the bank is located. The director shall notify the federal reserve bank of the district of taking possession of any bank which is a member of the federal reserve system.

Section 27. That § 51A-17-44 be repealed.

Section 28. That § 54-14-13.5 be amended to read as follows:

54-14-13.5. Any company who, for valuable consideration, originates, sells, or services nonresidential mortgage loans, shall apply for, on forms prescribed by the director, and maintain, a mortgage lending license and is subject to the tax as provided in § 54-14-30. The tax required in § 54-14-30 shall be imposed only on those loans funded after December 31, 2009. The requirement of a surety bond as provided in § 54-14-24 does not apply to a company licensed under this section.

Any individual solely employed by or solely acting as an intermediary on behalf of a company licensed pursuant to this section is not required to hold an individual license under this chapter. Any individual acting as an intermediary, on behalf of a company licensed as provided in this section, shall be disclosed to the director during the application process and annually thereafter.

The requirements of registration with the nationwide mortgage licensing system and registry do not apply to any company or its employees or intermediaries licensed pursuant to this section.

Section 29. That § 54-14-22 be repealed.

Section 30. That § 58-1-18 be repealed.

Section 31. That § 58-2-31 be repealed.

Section 32. That § 58-5-88 be repealed.

Section 33. That § 58-5-89 be repealed.

Section 34. That § 58-5-90 be repealed.

Section 35. That § 58-5-91 be repealed.

Section 36. That § 58-5-92 be repealed.

Section 37. That § 58-29D-17 be repealed.

Section 38. That § 58-42-1 be repealed.

Section 39. That § 58-42-2 be repealed.

Section 40. That § 58-42-3 be repealed.

Section 41. That § 58-42-4 be repealed.

Section 42. That § 58-42-5 be repealed.

Section 43. That § 58-42-6 be repealed.

Section 44. That § 58-42-7 be repealed.

Section 45. That § 58-42-8 be repealed.

Section 46. That § 58-42-9 be repealed.

Section 47. That § 58-42-10 be repealed.

Section 48. That § 58-42-11 be repealed.

Section 49. That § 58-42-12 be repealed.

Section 50. That § 58-42-13 be repealed.

Section 51. That § 58-42-14 be repealed.

Section 52. That § 58-42-15 be repealed.

Section 53. That § 58-42-16 be repealed.

Section 54. That § 58-42-17 be repealed.

Section 55. That § 61-3-14 be amended to read as follows:

61-3-14. The secretary of labor and regulation shall make available for the public the text of this title, administrative rules promulgated pursuant to this title, annual reports to the Governor, and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

Section 56. That § 61-5-18.14 be repealed.

Section 57. That § 61-6-20 be amended to read as follows:

61-6-20. No individual is entitled to any benefits for a week for which the individual is receiving, has received, or will receive remuneration in the form of:

- (1) Termination, vacation, holiday, severance, or dismissal payments or wages in lieu of notice whether legally required or not. However, in the case of lump sum termination,

vacation, holiday, severance, or dismissal payments, the lump sum payment shall be allocated over a period of weeks equal to the lump sum divided by the employee's regular pay while employed. However, the payment shall be applied for a period of weeks immediately following the last day of work. Payments made to an individual based entirely on the individual's contributions to a fund from which the payments are made are not vacation pay;

- (2) Compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States; or
- (3) The prorated weekly amount of any pension, annuity or retirement payment including disability pension payments, based on the previous work of the individual. This subdivision applies only to payments made under a plan contributed to by a base period employer. This does not apply to payments made under Title II of the Social Security Act or the Railroad Retirement Act of 1974, to military service-connected disability payments or to that part, if any, of a pension, annuity or retirement payment that is attributable to contributions of the individual.

If the remuneration is less than the benefits which would otherwise be due under this chapter, the individual shall receive for the week, if otherwise eligible, benefits reduced by the amount of the remuneration.

Section 58. That § 61-6-45 be amended to read as follows:

61-6-45. No individual may receive extended benefits for any week of unemployment in the individual's eligibility period if the secretary finds that during the period the individual failed to accept an offer of suitable work, failed to apply for suitable work to which the individual was referred by the secretary, or failed to actively engage in seeking work.

An individual who has been found to be ineligible for extended benefits shall be denied benefits

for the week in which the failure occurred and until the individual has been subsequently employed for at least six calendar weeks in insured employment and has earned wages of not less than the individual's weekly benefit amount in each of those six weeks.

The term, suitable work, in this section means any work within an individual's capabilities which has a gross weekly wage that exceeds the individual's weekly benefit amount plus any supplemental unemployment benefits and which pays not less than the higher of the federal minimum wage as provided by the Fair Labor Standards Act or the state minimum wage.

No individual may be denied extended benefits for failure to accept an offer of, or apply for, a job which would otherwise be suitable work if:

- (1) The position was not offered to the individual in writing or was not listed with the department;
- (2) The position does not constitute suitable work under § 61-6-16; or
- (3) The individual furnishes satisfactory evidence to the secretary that the individual's prospects for obtaining work in the individual's customary occupation within three weeks are good. If such evidence is satisfactory, suitable work shall be determined in accordance with § 61-6-16.

An individual is actively seeking work during a week if the individual engages in a sustained and systematic effort to obtain work during that week and the individual furnishes tangible evidence that the individual has engaged in such an effort during that week.

The department shall refer an individual who is entitled to extended benefits to any suitable work which meets the criteria described in this section.

Section 59. The code counsel shall reorganize chapters 61-1, 61-5, and 61-6 pursuant to the requirements of § 2-16-9, shall arrange and correlate each section within each chapter, and shall adjust any cross-references for each section in each chapter.

An Act to revise certain provisions and delete certain obsolete provisions pertaining to the Department of Labor and Regulation.

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I certify that the attached Act originated in the SENATE as Bill No. 34

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 34
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____, 20__ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby approved this ____ day of _____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State