



## 2021 South Dakota Legislature

# Senate Bill 8

*Introduced by: The Committee on Commerce and Energy at the request of the Department of Labor and Regulation*

1 **An Act to revise various provisions related to banks and trusts.**

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

3 **Section 1.** That § 51A-5-9 be AMENDED.

4 **51A-5-9. Filing with Office of the Secretary of State by foreign bank or trust**  
 5 **company acting as fiduciary--Designation as agent to receive process--Service**  
 6 **of process.**

7 Before qualifying or serving in this state in any fiduciary capacity, as defined in  
 8 § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of  
 9 South Dakota, a copy of its charter certified by its secretary under its corporate seal, and  
 10 a power of attorney designating the secretary of state or the secretary of state's successor  
 11 in office as the person upon whom all notices and processes issued by any court of this  
 12 state may be served in any action or proceeding relating to any trust, estate, or matter  
 13 within this state in respect of which the bank or trust company is acting in any fiduciary  
 14 capacity with like effect as personal service on the bank or trust company. The power of  
 15 attorney is irrevocable so long as any liability remains outstanding against the bank or  
 16 trust company in this state. Service of process under this section may be made in the  
 17 manner provided in ~~§ 47-1A-1510~~ chapter 59-11.

18 **Section 2.** That § 51A-7-13 be AMENDED.

19 **51A-7-13. Definition of terms.**

20 Terms used in §§ 51A-7-13 to ~~51A-7-27~~ 51A-7-26, inclusive, mean:

- 21 (1) "Acquisition of a branch," the acquisition of a branch located in a host state;  
 22 (2) "Bank," a bank as defined in 12 U.S.C. § 1813(h) as of January 1, 1996. The term  
 23 does not include any foreign bank as defined in § 12 U.S.C. 3101(7) as of January  
 24 1, 1996. However, the term includes any foreign bank organized under the laws of  
 25 a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin

- 1 Islands, the deposits of which are insured by the Federal Deposit Insurance  
 2 Corporation;
- 3 (3) "Bank supervisory agency," any agency of another state with primary responsibility  
 4 for chartering and supervising banks, the Office of the Comptroller of the Currency,  
 5 the Federal Deposit Insurance Corporation, the Board of Governors of the Federal  
 6 Reserve System, or any successor to these agencies;
- 7 (4) "Branch," a branch bank as defined by subdivision 51A-1-2(7);
- 8 (5) "Director," the director of the Division of Banking;
- 9 (6) "Control," control as construed consistently with the provisions of 12 U.S.C.  
 10 § 1841(a)(2) as of January 1, 1996;
- 11 (7) "Home state," for a state bank, the state by which the bank is chartered; for a  
 12 national bank, the state in which the main office of the bank is located; and for a  
 13 foreign bank, the state determined to be the home state of the foreign bank  
 14 pursuant to 12 U.S.C. § 3103(c) as of January 1, 1996;
- 15 (8) "Home state regulator," for an out-of-state state bank, the bank supervisory agency  
 16 of the state in which the bank is chartered;
- 17 (9) "Host state," a state, other than the home state of a bank, in which the bank  
 18 maintains, or seeks to establish and maintain a branch;
- 19 (10) "Out-of-state bank," a bank whose home state is a state other than South Dakota;
- 20 (11) "Out-of-state state bank," a bank chartered under the laws of any state other than  
 21 South Dakota;
- 22 (12) "State," any state of the United States, the District of Columbia, any territory of the  
 23 United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the  
 24 Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;
- 25 (13) "South Dakota state bank," a bank chartered under the laws of South Dakota; and
- 26 (14) "Commission," the State Banking Commission for South Dakota.

27 **Section 3.** That § 51A-7-19 be AMENDED.

28 **51A-7-19. Examination of out-of-state bank's South Dakota branch.**

29 The director may make such examinations of any branch established and  
 30 maintained in South Dakota pursuant to §§ 51A-7-13 to ~~51A-7-27~~ 51A-7-26, inclusive, by  
 31 an out-of-state state bank as the director may deem necessary to determine whether the  
 32 branch is operated in compliance with the laws of South Dakota and in accordance with  
 33 safe and sound banking practices. The provisions of § 51A-2-18 apply to the examinations.

1 **Section 4.** That § 51A-7-23 be AMENDED.

2 **51A-7-23. Joint examinations of joint enforcement actions by commission**  
3 **and bank supervisory agencies.**

4 The commission may enter into joint examinations ~~of~~ or joint enforcement actions  
5 with other bank supervisory agencies having concurrent jurisdiction over any branch  
6 established and maintained in South Dakota by an out-of-state bank or any branch  
7 established and maintained by a South Dakota state bank in any host state. The director  
8 may at any time take any actions independently if the director deems such actions to be  
9 necessary or appropriate to carry out the commission's responsibilities under §§ 51A-7-  
10 13 to ~~51A-7-27~~ 51A-7-26, inclusive, or to ensure compliance with the laws of South  
11 Dakota. However, in the case of an out-of-state state bank, the director shall recognize  
12 the exclusive authority of the home state regulator with respect to matters of safety and  
13 soundness.

14 **Section 5.** That § 51A-7-26 be AMENDED.

15 **51A-7-26. Promulgation of rules to establish fees.**

16 The commission may promulgate rules pursuant to chapter 1-26 to establish the  
17 fees provided by §§ 51A-7-13 to ~~51A-7-27~~ 51A-7-15, inclusive, and to provide the  
18 necessary forms to administer §§ 51A-7-13 to ~~51A-7-27~~ 51A-7-25, inclusive.

19 **Section 6.** That § 51A-12-13 be AMENDED.

20 **51A-12-13. Collection of certain credit service charges by bank.**

21 Notwithstanding any other provisions of law, a bank may contract for and collect  
22 the following credit service charges in connection with the extensions of credit made  
23 pursuant to § 51A-12-12, in an amount agreed to by the bank and the debtor either  
24 initially or pursuant to a ~~modification made under § 54-11-10~~ change in terms authorized  
25 in § 54-11-12:

- 26 (1) Membership fees, whether assessed on an annual or other periodic basis;  
27 (2) Transaction fees;  
28 (3) Interest charges permitted by § 54-3-1.1;  
29 (4) Charges for exceeding a designated credit limit;  
30 (5) Charges for stopping payment;  
31 (6) Charges for each return of a dishonored check, negotiable order of withdrawal or  
32 draft; and

1 (7) Other charges made in connection with the revolving loan or charge account  
2 arrangement.

3 All of the fees and charges permitted by this section shall be deemed interest. No fee,  
4 expense or other charge whatsoever may be taken or received by a bank under a revolving  
5 loan or charge account arrangement except as provided in this section.

6 **Section 7.** That § 55-13-3 be AMENDED.

7 **55-13-3. Income--Principal--Charges.**

8 (a) Income is the return in money or property derived from the use of principal,  
9 including return received as

- 10 (1) rent of real or personal property, including sums received for cancellation or  
11 renewal of a lease;
- 12 (2) interest on money lent, including sums received as consideration for the  
13 privilege of prepayment of principal except as provided in § 55-13-7 on bond  
14 premium and bond discount;
- 15 (3) income earned during administration of a decedent's estate as provided in  
16 § 55-13-5;
- 17 (4) corporate distributions as provided in § 55-13-6;
- 18 (5) accrued increment on bonds or other obligations issued at discount as  
19 provided in § 55-13-7;
- 20 (6) receipts from business and farming operations as provided in § 55-13-8;
- 21 (7) receipts from disposition of natural resources as provided in §§ 55-13-9 and  
22 55-13-10;
- 23 (8) receipts from other principal subject to depletion as provided in § 55-13-11;
- 24 (9) receipts from disposition of any underproductive property ~~as provided in §~~  
25 ~~55-13-12.~~

26 (b) Principal is the property which has been set aside by the owner or the person legally  
27 empowered so that it is held in trust eventually to be delivered to a remainderman  
28 while the return or use of the principal is in the meantime taken or received by or  
29 held for accumulation for an income beneficiary. Principal includes

- 30 (1) consideration received by the trustee on the sale or other transfer of principal  
31 or on repayment of a loan or as a refund or replacement or change in the  
32 form of principal;
- 33 (2) proceeds of property taken on eminent domain proceedings;

- 1 (3) proceeds of insurance upon property forming part of the principal except  
2 proceeds of insurance upon a separate interest of an income beneficiary;
- 3 (4) stock dividends, receipts on liquidation of a corporation, and other corporate  
4 distributions as provided in § 55-13-6;
- 5 (5) receipts from the disposition of corporate securities as provided in § 55-13-  
6 7;
- 7 (6) royalties and other receipts from disposition of natural resources as provided  
8 in §§ 55-13-9 and 55-13-10;
- 9 (7) receipts from other principal subject to depletion as provided in § 55-13-11;
- 10 (8) any profit resulting from any change in the form of principal ~~except as~~  
11 ~~provided in § 55-13-12~~ on underproductive property;
- 12 (9) receipts from disposition of any underproductive property ~~as provided in §~~  
13 ~~55-13-12~~;
- 14 (10) any allowances for depreciation established under §§ 55-13-8 and 55-13-  
15 13(a)(2).
- 16 (c) After determining income and principal in accordance with the terms of the trust  
17 instrument or of this chapter, the trustee shall charge to income or principal  
18 expenses and other charges as provided in § 55-13-13.