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## **DIVISION OF BANKING**

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## **MEMORANDUM**

NUMBER: 20-023

DATE: June 15, 2018

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 1028 (HB 1028) which was introduced and signed into law by Governor Dennis Daugaard. The amendments to existing law established in HB 1028 will become effective on July 1, 2018. I would encourage you to review this bill in detail at your convenience at the following link:

<http://sdlegislature.gov/docs/legsession/2018/Bills/HB1028ENR.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.

### **HB 1028**

The following provisions of HB 1028 amend Chapters 51A-6A and 51A-1, and were adopted to make the following changes:

- Section 1 modifies the definition of “dividends” to ensure trust companies organized as limited liability companies are treated the same as trust companies organized as corporations for purposes of distributions from capital. Trust companies organized as corporations are only permitted to issue dividends from undivided profits net of any losses, otherwise referred to as positive retained earnings. Current law could allow trust companies organized as limit liability companies to dividend out of regulatory capital. See also SDCL 51A-6A-27.
- Section 2 prohibits special purpose entities from using the word “trust” in their name. Use of the word trust is generally limited to entities granted trust powers. Trust companies chartered under chapter 51A-6A are required to use the word trust in their name. Conversely, special purpose entities which are excluded from regulation as trust companies will be prohibited from using the word trust in their name.