

State of South Dakota
Department of Labor and Regulation
Banking Commission

In re Petition for Declaratory Ruling of PayServices, Inc.)))	Findings of Fact, Conclusions of Law, and Declaratory Ruling
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On March 4, 2022, PayServices, Inc. filed a petition for declaratory ruling from the South Dakota State Banking Commission. On March 29, 2022 the State Banking Commission made its declaratory ruling. On March 30, 2022, counsel for the State Banking Commission mailed its ruling to PayServices and the Director of the South Dakota Division of Banking. On March 30, 2022, PayServices, Inc. filed, by e-mail, an updated petition for declaratory ruling from the South Dakota State Banking Commission. On March 30, 2022, the State Banking Commission received PayServices’ petition. The State Banking Commission, having received, reviewed, and analyzed the petition and South Dakota’s applicable laws and rules, issues the following declaratory ruling:

Findings of Fact

1. On March 4, 2022, PayServices duly filed a petition seeking a declaratory ruling.
2. PayServices asked the State Banking Commission to “permanently invoke[] the director's and the commission's discretion in the applicability of [ARSD § 20:07:10:05] as a condition of approval and waive[] the requirement for PayServices to possess Federal Deposit Insurance Corporation ("FDIC") of accounts prior to the acceptance of deposits.”
3. On March 29, 2022, the State Banking Commission ruled that

The Director of the South Dakota Division of Banking must condition the approval of a new bank, such as PayServices, that prior to the acceptance of any deposits by a bank, such as PayServices, it must possess federal deposit insurance corporation insurance of accounts.
4. On March 30, 2022, counsel for the State Banking Commission mailed and e-mailed to PayServices and the Director of the South Dakota Division of Banking the State Banking Commission’s declaratory ruling.
5. On March 30, 2022, PayServices’ filed a petition seeking a declaratory ruling.
6. On March 30, 2022, the State Banking Commission received PayServices’ petition.

7. PayServices' petition "requests that the State Banking Commission waives its own Rule 20:07:10:05 in its entirety as a condition of approval for a future PayServices state bank charter application."

Conclusions of Law

1. SDCL § 1-26-15 requires the State Banking Commission to provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any law or of any rule.

2. ARSD § 20:07:02:01 provides the form of petition for any party to seek a declaratory ruling as to any law or to any rule.

3. ARSD § 20:07:02:02 requires the State Banking Commission to issue a declaratory ruling within 30 days following receipt of a petition for declaratory ruling.

4. SDCL § 51A-4-8 provides that the State Banking Commission may require, by rule, South Dakota's state chartered banks to obtain federal deposit insurance for bank accounts.

5. ARSD 20:07:10:05, a State Banking Commission rule duly promulgated under SDCL Ch. 1-26, provides:

The director shall condition the approval of new banks . . . that prior to the acceptance of any deposits by a bank it must possess federal deposit insurance corporation insurance of accounts . . . and it must have the approval of the bank's application by the federal deposit insurance corporation or the appropriate federal reserve bank. Banks not wishing to accept deposits need not obtain deposit insurance, but in no case may such banks accept deposits without complying with the provisions of this section.

6. SDCL § 1-26-1(8) defines rule as "each agency[']s] statement of general applicability that implements, interprets, or prescribes law, policy, procedure, or practice requirements of any agency."

7. The State Banking Commission does not have the discretion to waive, suspend, or disregard a validly adopted rule. *Union of Concerned Scientists v. Atomic Energy Comm'n*, 499 F.2d 1069 (D.C. Cir. 1974); *Schmidt v. State*, 586 N.W.2d 148 (Neb. 1998); *DeLoss v. HUD*, 714 F. Supp. 1522 (S.D. Iowa 1988); *see also* ARSD § 20:10:12:17 (providing procedure for rule waiver request in validly adopted rule).

Declaratory Ruling

The State Banking Commission denies PayServices' request that the State Banking Commission waive its own Rule 20:07:10:05 in its entirety as a condition of approval for a future PayServices state bank charter application. The Director of the South Dakota Division of Banking must condition the approval of a new bank, such as PayServices, that prior to the acceptance of any deposits by a bank, such as PayServices, it must possess federal deposit insurance corporation insurance of accounts.

Dated April 20, 2022.

SOUTH DAKOTA BANKING COMMISSION

By

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke, is written over a solid horizontal line.

Its Chairman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Findings of Fact, Conclusions of Law, and Declaratory Ruling was served by regular, United States mail, postage prepaid, and e-mail as requested by petitioner, on April 20, 2022, upon:

Lionel Danenberg
Director for Petitioner
PayServices, Inc.
14061 Pacific Point Pl #204
Delray Beach, FL 33484

Bret Afdahl
Director
South Dakota Division of Banking
1601 N. Harrison Ave., Suite 1
Pierre, SD 57501

which addresses are the last addresses of the addressees known to the subscriber.

Wilbur Alan, PLLC



By Matthew P. Bock
Attorneys for the South Dakota Banking Commission