

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

634H0445

HOUSE BILL NO. 1079

Introduced by: Representatives Broderick and Hansen (Tom) and Senators Munson and McCracken

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to preferential deposits
2 of financial institutions.

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

4 Section 1. That § 51A-10-9 be amended to read as follows:

5 51A-10-9. No bank may give preference to any depositor or creditor by pledging the assets
6 of the bank as collateral security except as provided in §§ 51A-4-13 and 51A-5-18 and as
7 follows:

8 (1) The bank may deposit with the treasurer of the United States so much of its assets as
9 may be necessary to qualify as a depository for federal funds and bankruptcy court
10 funds;

11 (2) A bank, in order to qualify as a depository of funds deposited by the state, any
12 political subdivision thereof, including counties, municipalities, townships, and school
13 districts, or by any officer, commission, board, bureau, or agency of the state or
14 political subdivision or any tribal government, shall segregate as security, investment
15 securities as provided in §§ 51A-4-25 and 51A-4-26, or irrevocable standby letters



1 of credit, or a surety bond, in accordance with § 4-6A-3, a sum equal to one hundred
2 ~~ten~~ percent of the amount deposited in excess of the amount insured by the Federal
3 Deposit Insurance Corporation;

4 (3) A bank may pledge securities to guarantee deposit of out-of-state municipal, school
5 district, county, or state funds in excess of the amount insured by the federal deposit
6 insurance corporation;

7 (4) The public deposits preferred by this section are hereby granted a paramount,
8 preferred, and perfected first lien on the bank assets so deposited; or segregated or
9 pledged.

10 Section 2. That § 52-5-20 be amended to read as follows:

11 52-5-20. No association or federal savings and loan association as defined in § 52-1-1 may
12 give preference to any depositor or creditor by pledging the assets of the association as collateral
13 security except as follows:

14 (1) The association may deposit with the treasurer of the United States so much of its
15 assets as may be necessary to qualify as a depository for federal funds and bankruptcy
16 court funds;

17 (2) An association, in order to qualify as a depository of funds deposited by the state, any
18 political subdivision thereof, including counties, municipalities, townships, and school
19 districts, or by any officer, commission, board, bureau, or agency of the state or
20 political subdivision or any tribal government, shall segregate as security, investment
21 securities as provided in §§ 51A-4-25 and 51A-4-26 or irrevocable standby letters of
22 credit, or a surety bond in accordance with § 4-6A-3, a sum equal to one hundred ~~ten~~
23 percent of the amount deposited in excess of the amount insured by the Federal
24 Deposit Insurance Corporation investment securities as provided in §§ 51A-4-25 and

1 51A-4-26;

2 (3) An association may pledge securities to guarantee deposit of out-of-state municipal,
3 school district, county, or state funds in excess of the amount insured by the federal
4 savings and loan insurance corporation;

5 (4) The public deposits preferred by this section are hereby granted a paramount,
6 preferred, and perfected first lien on the association assets so deposited; or segregated
7 or pledged.

8 Section 3. That § 4-6A-1 be amended to read as follows:

9 4-6A-1. Terms as used in this chapter mean:

10 (1) "Commission," the South Dakota Public Deposit Protection Commission created
11 under § 4-6A-2;

12 (2) "Deposit insurance," insurance provided by the Federal Deposit Insurance
13 Corporation, or the Federal Savings and Loan Insurance Corporation, or the National
14 Credit Union Administration;

15 (3) "Eligible collateral," collateral which is eligible as security for public deposits pursuant
16 to §§ 51A-10-9, 52-5-20, 51A-4-25, and 51A-4-26 and also includes that portion of
17 loans which are unconditionally guaranteed by a United States government agency
18 including Government National Mortgage Association (GNMA), the Veterans'
19 Administration (VA), the Federal Housing Administration (FHA), the Farmers Home
20 Administration (FmHA), the Export-Import Bank (EXIMBANK), the Overseas
21 Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC),
22 and the Small Business Administration (SBA). Further, in lieu of pledging eligible
23 securities, a qualified public depository may furnish to a public depositor irrevocable
24 standby letters of credit issued by Federal Home Loan Banks to the public depositor

1 accompanied by a written evidence of that bank's public debt rating which may not be
2 less than "AA" or better by Moody's Investors Service, Inc., or Standard & Poor's
3 Corporation, or a qualified public depository may furnish to a public depositor a
4 corporate surety bond of a corporation authorized to do business in South Dakota;

5 (4) "Loss," issuance of an order of supervisory authority restraining a qualified public
6 depository from making payments of deposit liabilities or the appointment of a
7 receiver for a qualified public depository;

8 (5) "Maximum liability," a sum equal to one hundred ~~ten~~ percent of the public deposit
9 accounts which exceed deposit insurance, which are held by the qualified public
10 depository;

11 (6) "Public deposit," all general, special, and other funds held or administered by this state
12 or any political subdivision thereof, including counties, municipalities, townships, and
13 school districts, or by any officer, commission, board, bureau, or agency of the state
14 or political subdivision or any tribal government funds, and which public deposit is
15 insured, in whole or in part, by deposit insurance. Deposits placed in banks by the
16 Value Added Finance Authority created pursuant to chapter 1-16E are not public
17 deposits;

18 (7) "Qualified public depository," a state bank or trust company or national bank or a
19 state chartered or federal savings and loan association or a federally chartered credit
20 union located in this state which receives or holds public deposits; and segregates
21 eligible collateral for public deposits as described in § 4-6A-3;

22 (8) "Treasurer," the state treasurer, a county treasurer, a treasurer of any other municipal
23 corporation, or the custodian of any public funds.

24 Section 4. That § 4-6A-20 be amended to read as follows:

1 4-6A-20. The Public Deposit Protection Commission ~~shall have the power to~~ may make and
2 enforce rules necessary and proper to the full and complete performance of the commission's
3 functions under this chapter, including the authority to provide by rule for a sum less than one
4 hundred ~~ten~~ percent if the depositor of public funds contracts with a qualified public depository
5 for a lesser amount, and including the authority to provide by rule for a sum less than one
6 hundred ~~ten~~ percent if the qualified public depository is subject to seasonal variances in public
7 deposits.