

AN ACT

ENTITLED, An Act to revise certain provisions relating to preferential deposits of financial institutions.

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

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

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

- (1) The bank may deposit with the treasurer of the United States so much of its assets as may be necessary to qualify as a depository for federal funds and bankruptcy court funds;
- (2) A bank, in order to qualify as a depository of funds deposited by the state, any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the state or political subdivision or any tribal government, shall segregate as security, investment securities as provided in §§ 51A-4-25 and 51A-4-26, or irrevocable standby letters of credit, or a surety bond, in accordance with § 4-6A-3, a sum equal to one hundred percent of the amount deposited in excess of the amount insured by the Federal Deposit Insurance Corporation;
- (3) A bank may pledge securities to guarantee deposit of out-of-state municipal, school district, county, or state funds in excess of the amount insured by the federal deposit insurance corporation;
- (4) The public deposits preferred by this section are hereby granted a paramount, preferred, and perfected first lien on the bank assets so deposited or segregated or pledged.

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

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

except as follows:

- (1) The association may deposit with the treasurer of the United States so much of its assets as may be necessary to qualify as a depository for federal funds and bankruptcy court funds;
- (2) An association, in order to qualify as a depository of funds deposited by the state, any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the state or political subdivision or any tribal government, shall segregate as security, investment securities as provided in §§ 51A-4-25 and 51A-4-26 or irrevocable standby letters of credit, or a surety bond in accordance with § 4-6A-3, a sum equal to one hundred percent of the amount deposited in excess of the amount insured by the Federal Deposit Insurance Corporation investment securities as provided in §§ 51A-4-25 and 51A-4-26;
- (3) An association may pledge securities to guarantee deposit of out-of-state municipal, school district, county, or state funds in excess of the amount insured by the federal savings and loan insurance corporation;
- (4) The public deposits preferred by this section are hereby granted a paramount, preferred, and perfected first lien on the association assets so deposited or segregated or pledged.

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

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

- (1) "Commission," the South Dakota Public Deposit Protection Commission created under § 4-6A-2;
- (2) "Deposit insurance," insurance provided by the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration;

- (3) "Eligible collateral," collateral which is eligible as security for public deposits pursuant to §§ 51A-10-9, 52-5-20, 51A-4-25, and 51A-4-26 and also includes that portion of loans which are unconditionally guaranteed by a United States government agency including Government National Mortgage Association (GNMA), the Veterans' Administration (VA), the Federal Housing Administration (FHA), the Farmers Home Administration (FmHA), the Export-Import Bank (EXIMBANK), the Overseas Private Investment Corporation (OPIC), the Commodity Credit Corporation (CCC), and the Small Business Administration (SBA). Further, in lieu of pledging eligible securities, a qualified public depository may furnish to a public depositor irrevocable standby letters of credit issued by Federal Home Loan Banks to the public depositor accompanied by a written evidence of that bank's public debt rating which may not be less than "AA" or better by Moody's Investors Service, Inc., or Standard & Poor's Corporation, or a qualified public depository may furnish to a public depositor a corporate surety bond of a corporation authorized to do business in South Dakota;
- (4) "Loss," issuance of an order of supervisory authority restraining a qualified public depository from making payments of deposit liabilities or the appointment of a receiver for a qualified public depository;
- (5) "Maximum liability," a sum equal to one hundred percent of the public deposit accounts which exceed deposit insurance, which are held by the qualified public depository;
- (6) "Public deposit," all general, special, and other funds held or administered by this state or any political subdivision thereof, including counties, municipalities, townships, and school districts, or by any officer, commission, board, bureau, or agency of the state or political subdivision or any tribal government funds, and which public deposit is insured, in whole or in part, by deposit insurance. Deposits placed in banks by the Value Added Finance

Authority created pursuant to chapter 1-16E are not public deposits;

- (7) "Qualified public depository," a state bank or trust company or national bank or a state chartered or federal savings and loan association or a federally chartered credit union located in this state which receives or holds public deposits; and segregates eligible collateral for public deposits as described in § 4-6A-3;
- (8) "Treasurer," the state treasurer, a county treasurer, a treasurer of any other municipal corporation, or the custodian of any public funds.

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

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

An Act to revise certain provisions relating to preferential deposits of financial institutions.

I certify that the attached Act
originated in the

HOUSE as Bill No. 1079

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1079
File No. _____
Chapter No. _____

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

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