

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 640

An Act to amend and reenact §§ 2.2-4400 through 2.2-4411 of the Code of Virginia, relating to the Virginia Security for Public Deposits Act.

[H 1036]

Approved April 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-4400 through 2.2-4411 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-4400. Short title; declaration of intent; applicability.

A. This chapter may be cited as the "Virginia Security for Public Deposits Act."

B. The General Assembly intends by this chapter to establish a single body of law applicable to the pledge of ~~security as collateral for public funds on deposit~~ *deposits* in financial institutions so that the procedure for securing public deposits may be uniform throughout the Commonwealth.

C. All public deposits in qualified public depositories that are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter. *Public depositors are required to secure their deposits pursuant to several applicable provisions of law, including but not limited to §§ 2.2-1813, 2.2-1815, 8.01-582, 8.01-600, 15.2-1512.1, 15.2-1615, 15.2-2625, 15.2-6611, 15.2-6637, 58.1-3149, 58.1-3150, 58.1-3154, and 58.1-3158.*

D. This chapter, however, shall not apply to deposits made by the State Treasurer in out-of-state financial institutions related to master custody and tri-party repurchase agreements, provided (i) such deposits do not exceed ten percent of average monthly investment balances and (ii) the out-of-state financial institutions used for this purpose have a short-term deposit rating of not less than A-1 by Standard & Poor's Rating Service or P-1 by Moody's Investors Service, Inc., respectively.

§ 2.2-4401. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Dedicated method" or "opt-out method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other qualified public depositories, pursuant to § 2.2-4404 and regulations and guidelines promulgated by the Treasury Board.

"Defaulting depository" means any qualified public depository determined to be in default or insolvent.

"Default or insolvency" includes, but shall not be limited to, the failure or refusal of any qualified public depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

"Eligible collateral" means securities of the character or instruments authorized as legal investments under the laws of the Commonwealth for public sinking funds or other public funds and securities acceptable under United States Treasury Department regulations as collateral for the security of treasury tax and loan accounts and as well as Federal Home Loan Bank letters of credit that adhere to the letters of credit issued in accordance with guidelines as promulgated by the Treasury Board.

"Located in Virginia" means having a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent.

"Pooled method" means securing public deposits by accepting the contingent liability for the losses of public deposits of other qualified public depositories choosing this method, pursuant to § 2.2-4403 and regulations and guidelines promulgated by the Treasury Board.

"Public deposit" means moneys of moneys held by a public depositor who is charged with the duty to receive or administer such moneys and is acting in an official capacity, such moneys being the Commonwealth or of any county, city, town or other political subdivision thereof, including moneys of any commission, institution, committee, board or officer of the foregoing and any state, circuit, county or municipal court, which moneys are deposited in any qualified public depository deposited in any of the following types of accounts: nonnegotiable or registered time deposits, demand deposits, savings deposits, and or any other transaction accounts, and security for such deposit is required by other provisions of law, or is required due to an election of the public depositor.

"Public depositor" means the Commonwealth or any county, city, town or other political subdivision thereof, including any commission, institution, committee, board, or officer of the foregoing and any state court.

"Qualified escrow agent" means the State Treasurer or any bank or trust company approved by the Treasury Board to hold collateral pledged to secure public deposits.

"Qualified public depository" means any national banking association, federal savings and loan

association or federal savings bank located in Virginia, any bank, trust company or savings institution organized under Virginia law, or any state bank or savings institution organized under the laws of another state located in Virginia; that receives or holds public deposits that are secured pursuant to this chapter authorized by the Treasury Board to hold public deposits according to this chapter.

"Required collateral" of a qualified public depository means; (i) in the case of a bank, a sum equal to 50 percent of the actual public deposits not covered by federal deposit insurance held at the close of business on the last banking day in the month immediately preceding the date of any computation of such balance, or the average balance of all public deposits for such preceding month, whichever is greater; and (ii) in the case of a savings and loan association or savings bank, a sum equal to 100 percent of the average daily balance for the month immediately preceding the date of any computation of such balance of all public deposits not covered by federal deposit insurance held by such depository but shall not be less than 100 percent of the public deposits held by such depository at the close of business on the last banking day in such preceding month *the amount of eligible collateral required to secure public deposits set by regulations or an action of the Treasury Board.*

"Treasurer" and "public depositor" means the State Treasurer, a county, city, or town treasurer or director of finance or similar officer and the custodian of any other public deposits secured pursuant to this chapter.

"Treasury Board" means the Treasury Board of the Commonwealth created by § 2.2-2415.

§ 2.2-4402. Collateral for public deposits.

Qualified public depositories shall elect to secure deposits by either the pooled method or the dedicated method. Every qualified public depository shall deposit with the State Treasurer, or, with the approval of the Treasury Board, with the Federal Reserve Bank of Richmond or any other bank or trust company located within or without the Commonwealth, *a qualified escrow agent* eligible collateral equal to or in excess of the required collateral of such depository to be held subject to the order of the Treasury Board. Eligible collateral shall be valued as determined by the Treasury Board. Substitutions and withdrawals of eligible collateral may be made from time to time under regulations issued as *determined by the Treasury Board.*

Each qualified public depository shall, at the time of the deposit of eligible collateral, deliver to the State Treasurer a power of attorney authorizing him to transfer any registered securities deposited, or any part thereof, for the purpose of paying any of the liabilities provided for in this chapter.

Notwithstanding any other provisions of law, no *qualified public* depository shall be required to give bond or pledge securities *or instruments* in the manner herein provided for the purpose of securing deposits received or held in the trust department of the depository and that are secured as required by § 6.1-21 of the Code of Virginia or that are secured pursuant to Title 12, § 92a of the United States Code by securities of the classes prescribed by § 6.1-21 of the Code of Virginia.

No qualified public depository shall accept or retain any public deposit that is required to be secured unless it has deposited eligible collateral equal to its required collateral with *some proper depository a qualified escrow agent* pursuant to this chapter.

§ 2.2-4403. Procedure for payment of losses by pooled method.

When the Treasury Board is advised by any treasurer or otherwise determines that a default or insolvency has occurred with regard to a qualified public depository *securing public deposits in accordance with this section is a defaulting depository* that is a bank not otherwise governed by § 2.2-4404, it shall as promptly as practicable make payment to the proper treasurer of all funds subject to such default or insolvency, *pursuant to take steps to reimburse public depositors for uninsured public deposits using the following procedures:*

1. The Treasury Board and the treasurer shall ascertain the amount of *uninsured* public funds on deposit with the qualified public deposits held by the defaulting depository in default or insolvent that are secured pursuant to this chapter, either with the cooperation of the Commissioner of Financial Institutions, *the* or receiver appointed for such depository, or by any other means available; and the amount of deposit insurance applicable to such deposits.

2. The amount of such *uninsured* public deposits ascertained as provided in subdivision 1, *net of applicable deposit insurance plus any costs associated with liquidation*, shall be assessed by the Treasury Board first against the *defaulting depository in default or insolvent* to the extent of the full realizable current market value of the collateral deposited by it *pledged* to secure its public deposits; and second, to the extent that such collateral.

3. *In the event the realized value of the pledged collateral in subdivision 2 is insufficient to satisfy the liability of the defaulting depository upon its deposits secured pursuant to this chapter against each of the to its public depositors and the Treasury Board, the Treasury Board shall assess the remaining liability against all other qualified public depositories not otherwise governed by § 2.2-4404 according to the ratio that the average daily balance for each month of the secured securing public deposits held by the depository during the twelve calendar months immediately preceding the date of the default or insolvency with respect to which the assessment is made bears to the according to the following ratio: total average daily public deposit balance for each month of all secured public deposits qualified public depository held during the immediately preceding twelve months divided by the total average public*

deposit balance for the same period held by all qualified public depositories under this section that are banks not otherwise governed by § 2.2-4404, other than the defaulting depository; during those twelve calendar months.

3 4. Assessments made by the Treasury Board *in accordance with subdivision 3* shall be payable by *the close of business* on the second business day following demand; ~~and in case of.~~ Upon the failure of any qualified public depository to pay such assessment when due, the State Treasurer shall promptly take possession of the eligible collateral deposited with *the non-paying depository's escrow agent* ~~him or with the Federal Reserve Bank of Richmond or other bank or trust company pursuant to this chapter~~ and liquidate the same to the extent necessary to pay ~~such the original assessment and turn over such amounts received to the Treasury Board plus any additional costs necessary to liquidate the collateral.~~

4 5. Upon receipt of such assessment, ~~payments or assessments and the net proceeds of the eligible collateral liquidated to pay such assessments~~ from the State Treasurer, the Treasury Board shall reimburse the public depositories to the extent of the *defaulting depository's deposit* liability to them, net of any applicable deposit insurance.

§ 2.2-4404. Procedure for payment of losses by dedicated method.

When the Treasury Board is advised by any treasurer or otherwise determines that a default or insolvency has occurred with regard to a qualified public depository that is a savings bank or a savings and loan association or bank not otherwise governed by § 2.2-4403 *securing public deposits in accordance with this section is a defaulting depository*, it shall as promptly as practicable *take steps to reimburse public depositories make payment to the proper treasurer* of all *uninsured public deposits using funds subject to such default or insolvency, pursuant to the following procedures:*

1. The Treasury Board and the treasurer shall ascertain the amount of *uninsured public funds on deposit with the qualified public deposits held by the defaulting depository in default or insolvent that are secured pursuant to this chapter, either with the cooperation of the Commissioner of Financial Institutions, the or receiver appointed for such depository or by any other means available, and the amount of deposit insurance applicable to such deposits.*

2. The amount of such *uninsured public deposits* ascertained as provided in subdivision 1, *plus any costs associated with liquidation of the eligible collateral of the defaulting depository* ~~net of applicable deposit insurance~~, shall be assessed by the Treasury Board against the *defaulting depository in default or insolvent*. The State Treasurer shall promptly take possession of ~~such~~ of the eligible collateral deposited by such depository with ~~him, or with any other depository pursuant to this chapter~~ *the depository's escrow agent*, as is necessary to satisfy the assessment of the Treasury Board and shall liquidate the same and turn over the *net proceeds thereof* to the Treasury Board.

3. Upon receipt from the State Treasurer of the ~~payments or proceeds of the eligible collateral liquidated to pay such assessments from the State Treasurer~~, the Treasury Board shall reimburse the public depositories *from the proceeds of the collateral up to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.*

§ 2.2-4405. Powers of Treasury Board relating to the administration of this chapter.

The Treasury Board shall have power to:

1. Make and enforce regulations *and guidelines* necessary and proper to the full and complete performance of its functions under this chapter;

2. Prescribe *and enforce* regulations *and guidelines* fixing terms and conditions consistent with this chapter under which public deposits ~~may must~~ be received and held secured;

3. Require ~~such~~ additional collateral, in excess of the required collateral of any *or all* qualified public depository, of ~~any and all such~~ depositories as it may determine prudent under the circumstances;

4. Determine what securities *or instruments* shall be acceptable as eligible collateral, and ~~to fix~~ the percentage of face value or market value of such securities *or instruments* that can be used to secure public deposits;

5. Establish guidelines to permit banks to withdraw from the procedures for the payment of losses under § 2.2-4403 and instead be governed by the procedures for the payment of losses under § 2.2-4404. ~~The guidelines shall be,~~ consistent with the primary purpose of protecting public deposits;

6. Require any qualified public depository to ~~furnish such~~ *provide* information concerning its public deposits *as requested by the Treasury Board*; and

7. Determine when a default or insolvency has occurred and to take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim arising in case of default or insolvency.

§ 2.2-4406. Subrogation of Treasury Board to depositor's rights; payment of sums received from distribution of assets.

Upon payment in full to any public depositor *on any claim presented pursuant to § 2.2-4403 or 2.2-4404*, the Treasury Board shall be subrogated to all of such depositor's rights, title and interest against the depository in default or insolvent and shall share in any distribution of ~~its such defaulting or insolvent depository's~~ assets ratably with other depositories. Any sums received from any such distribution shall be paid to the other qualified public depositories against which assessments were made, in proportion to such assessments, net of any proper *payment or* expense of the Treasury Board in

enforcing any such claim.

§ 2.2-4407. Mandatory deposit of public funds in qualified public depositories.

~~No public deposit that is~~ *Public deposits* required to be secured pursuant to this chapter shall be ~~deposited made except~~ in a qualified public depository.

§ 2.2-4408. Authority to make public deposits.

A. All ~~treasurers and~~ public depositors are hereby authorized to ~~deposit funds~~ *make public deposits* under their control in qualified public depositories, securing ~~such~~ public deposits pursuant to this chapter.

B. Local officials handling public ~~funds~~ *deposits* in the Commonwealth may not require from a ~~qualified public depository institution~~ any pledge of collateral for their deposits ~~in such institution which~~ is in excess of the requirements of this chapter.

§ 2.2-4409. Authority to secure public deposits; acceptance of liabilities and duties by public depositories.

All ~~institutions located in the Commonwealth that are permitted to hold and receive public deposits~~ *qualified public depositories* are hereby authorized to secure ~~such~~ *public* deposits in accordance with this chapter.

~~Any institution accepting a public deposit that is required to be secured pursuant to this chapter and shall be deemed to have accepted the liabilities and duties imposed upon it pursuant to this chapter with respect to the deposit.~~

§ 2.2-4410. Liability of public depositors.

When deposits are made in accordance with this chapter no ~~treasurer or official of~~ a public depositor shall be ~~personally~~ liable for any loss ~~thereof~~ resulting from the ~~failure or~~ default or insolvency of any ~~qualified public depository~~ in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees agents.

§ 2.2-4411. Reports of qualified public depositories.

~~Within ten days~~ *By the tenth day* after the end of each calendar ~~reporting~~ month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board a ~~written~~ *an electronic* report of such data ~~required by the Treasury Board to demonstrate that the current market value of its pledged collateral was equal to or greater than the amount of required collateral for the previous month, certified as to its accuracy by an authorized official of the qualified public depository under oath, indicating~~ (i) the total amount of public deposits held by it at the close of business on the last banking day in the month; (ii) the average daily balance for the month of all secured public deposits held by it during the month; (iii) a detailed schedule of pledged collateral at its current asset value for purposes of collateral at the close of business on the last banking day in the month; and (iv) any other information with respect to its secured public deposits that may be required by the Treasury Board.

~~Each~~ *Upon request by a public depositor,* a qualified public depository shall also furnish at the same time to each public depositor for which it holds deposits and that makes a written request therefor ~~provide~~ a schedule ~~detailling the public deposit accounts reported to the Treasury Board for that depositor, as well as the amount of total public deposits held by that depository at the close of the applicable month and the total market value of the collateral securing such public deposits of the secured public deposits to the credit of such depositor as of the close of business on the last banking day in the month and the total amount of all secured public deposits held by it upon such date.~~