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HOUSE BILL NO. 1739

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact § 6.2-890 of the Code of Virginia, relating to banks; securing deposits of governmental entities.

Patron—Merricks

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 6.2-890 of the Code of Virginia is amended and reenacted as follows:

§ 6.2-890. Preferences by pledging assets.

A. No bank shall give preference to any depositor or creditor by pledging the assets of such bank, except as otherwise authorized by subsection B, or except to secure deposits of trust funds made pursuant to the provisions of § 6.2-1005 or 6.2-1057.

B. Notwithstanding the provisions of subsection A, any bank:

1. May deposit securities for the purpose of securing deposits of:

a. The United States government and its agencies;

b. The Commonwealth, ~~its agencies, and its political subdivisions~~ *any other state where the bank has a branch office, or any agency or political subdivision thereof*;

c. Insolvent national bank funds as permitted under 12 U.S.C. § 192;

d. Proceeds of sale of United States obligations as permitted under 31 U.S.C. § 771; and

e. Bankruptcy funds deposited under the provisions of 11 U.S.C. ~~§ 15345~~ *§ 345*;

2. May deposit securities for the purpose of securing sureties on surety bonds furnished to secure deposits listed in subdivision 1, or may, in lieu of depositing such securities to secure deposits ~~of political subdivisions of the Commonwealth~~ *pursuant to subdivision 1 b*, by its board of directors, adopt a resolution before such public funds are deposited therein, to the effect that, in the event of the insolvency or failure of such bank, such public funds thereafter deposited therein shall, in the distribution of the assets of such bank, be paid in full before any other depositors shall be paid deposits thereafter made therein. The adoption of such resolution shall be deemed to constitute an obligation binding on such bank;

3. Is authorized to pledge its assets as security for amounts of borrowed money which shall not, without the approval of the Commission given in advance in writing, exceed in the aggregate the amount of the capital, surplus, and undivided profits of such bank actually paid in or earned and remaining undiminished by losses or otherwise. The amount of assets pledged for the security of such a loan shall not, without such approval, exceed 150 percent of the amount borrowed. No loan in excess of the amount so permitted made to any such bank shall be invalid or illegal as to the lender, even though made without the consent of the Commission. Rediscounting with or without guarantee or endorsement of notes, drafts, bills of exchange, or loans is hereby authorized and shall not be limited by the terms of this section, and shall not be considered as borrowed money within the meaning of this section;

4. Is authorized to borrow from a Federal Reserve Bank or a Federal Home Loan Bank and to rediscount with and sell to a Federal Reserve Bank or a Federal Home Loan Bank any and all notes, drafts, bills of exchange, acceptances, and other securities, and to give security for all money so borrowed and for all liabilities incurred by the discount of such notes, drafts, bills of exchange and other securities without restriction in like manner and to the same extent as national banks may lawfully do under the acts of Congress and regulations of the Board of Governors of the Federal Reserve System and the Federal Housing Finance Board; and

5. Is authorized to pledge its assets in connection with qualified financial contracts, which transactions shall be governed by this subdivision and not subdivision 3. The amount of assets pledged for obligations under such contracts shall not exceed 150 percent of the amount of the obligations, without the consent of the Commission, and the qualified financial contract shall be in writing and approved by the board of directors of such bank or an appropriate committee, which approval shall be reflected in the minutes of such board or committee. At the time any qualified financial contracts consisting of retail repurchase agreements are sold by a state bank, the market value of the underlying security must be at least equal to the amount of the aggregate purchase price paid by the purchasers of the retail repurchase agreements. As used in this subdivision, "qualified financial contract" means a qualified financial contract as defined in 12 U.S.C. § 1821(e) (8) (D) (i), as the same may be amended, and any contract or transaction that the Commissioner determines to be a qualified financial contract for

purposes of this section.