

CHAPTER 326

AN ACT concerning governmental unit public funds deposited in public depositories, amending and supplementing P.L.1970, c.236, and amending P.L.2005, c.199.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1970, c.236 (C.17:9-41) is amended to read as follows:

C.17:9-41 Definitions.

1. In this act, unless the context otherwise requires:

"Adequately capitalized" means, with respect to a public depository, "adequately capitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing regulations;

"Association" means any State or federally chartered savings and loan association;

"Capital funds" means (a) in the case of a State bank or national bank or capital stock savings bank, the aggregate of the capital stock, surplus and undivided profits of the bank or savings bank; (b) in the case of a mutual savings bank, the aggregate of the capital deposits, if any, and the surplus of the savings bank; and (c) in the case of an association, the aggregate of all reserves required by any law or regulation, and the undivided profits, if any, of the association;

"Commissioner" means the Commissioner of Banking and Insurance;

"Critically undercapitalized" means, with respect to a public depository, "critically undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing regulations;

"Defaulting depository" means a public depository as to which an event of default has occurred;

"Eligible collateral" means:

(a) Obligations of any of the following:

(1) The United States;

(2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

(3) The State of New Jersey or any of its political subdivisions;

(4) Any other governmental unit; or

(b) Obligations guaranteed or insured by any of the following, to the extent of that insurance or guaranty:

(1) The United States;

(2) Any agency or instrumentality of the United States, including, but not limited to, the Student Loan Marketing Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration and the Small Business Administration;

(3) The State of New Jersey or any of its political subdivisions; or

(c) Obligations now or hereafter authorized by law as security for public deposits;

(d) Obligations in which the State, political subdivisions of the State, their officers, boards, commissions, departments and agencies may invest pursuant to an express authorization under any law authorizing the issuance of those obligations;

(e) Obligations, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank; or

(f) Any other obligations as may be approved by the commissioner by regulation or by specific approval;

"Event of default" means issuance of an order of a supervisory authority or of a receiver restraining a public depository from making payments of deposit liabilities;

"Governmental unit" means any county, municipality, school district or any public body corporate and politic created or established under any law of this State by or on behalf of any one or more counties or municipalities, or any board, commission, department or agency of any of the foregoing having custody of funds;

"Maximum liability" of a public depository means, with respect to any event of default, a sum equal to 4% of the average daily balance of collected public funds held on deposit by the depository during the three-month period ending on the last day of the month immediately preceding the occurrence of the event of default that exceed the amount of such public fund deposits that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories;

"Net deposit liability" means the deposit liability of a defaulting depository to a governmental unit after deduction of any deposit insurance with respect thereto;

"Obligations" means any bonds, notes, capital notes, bond anticipation notes, tax anticipation notes, temporary notes, loan bonds, mortgage related securities, or mortgages;

"Public depository" means a State or federally chartered bank, savings bank or an association located in this State or a state or federally chartered bank, savings bank or an association located in another state with a branch office in this State, the deposits of which are insured by the Federal Deposit Insurance Corporation and which receives or holds public funds on deposit;

"Public funds" means the funds of any governmental unit, but does not include deposits held by the State of New Jersey Cash Management Fund;

"Significantly undercapitalized" means, with respect to a public depository, "significantly undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing regulations;

"Undercapitalized" means, with respect to a public depository, "undercapitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing regulations;

"Valuation date" means March 31, June 30, September 30, and December 31;

"Well capitalized" means, with respect to a public depository, "well capitalized" as the term is defined in subsection (b) of section 38 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1831o(b)), and its implementing regulations.

2. Section 2 of P.L.1970, c.236 (C.17:9-42) is amended to read as follows:

C.17:9-42 Security requirement for public depositories.

2. The receipt and holding of public funds on deposit by a public depository is a voluntary activity undertaken by that depository. However, no governmental unit shall deposit public funds in a public depository unless such funds are secured by the depository, and the depository is otherwise in compliance, or acting in accordance with, this act.

C.17:9-43.1 Eligible collateral requirement for certain public funds.

3. a. (1) Except as set forth in subsection b. of this section concerning extraordinary amounts of public funds on deposit, every public depository having public funds on deposit therein that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, shall maintain, as security for such deposits, eligible collateral having a market value:

(a) At least equal to 5% of the uninsured public funds on deposit, if the public depository is well capitalized;

(b) At least equal to 30% of the uninsured public funds on deposit, if the public depository is adequately capitalized;

(c) At least equal to 60% of the uninsured public funds on deposit, if the public depository is undercapitalized;

(d) At least equal to 90% of the uninsured public funds on deposit, if the public depository is significantly undercapitalized, or, in the alternative and at the election of the depository, a reduction in the amount of public funds held on deposit, so that the only remaining public funds on deposit after this reduction are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories; or

(e) At least equal to 120% of the uninsured public funds on deposit, if the public depository is critically undercapitalized, or, in the alternative and at the election of the depository, a reduction in the amount of public funds held on deposit, so that the only remaining public funds on deposit after this reduction are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

(2) The amount of eligible collateral in relation to the amount of public funds on deposit necessary for a public depository to meet the collateral requirements of paragraph (1) of this subsection shall be measured as: (a) the percentage, set forth under paragraph (1) of this subsection, of the average daily balance of collected, uninsured public funds on deposit during the three-month period ending on the immediately preceding valuation date; or (b), at the election of the depository, the percentage, set forth under paragraph (1) of this subsection, of the average balance of collected, uninsured public funds on deposit on the first, eighth, fifteenth and twenty-second days of each month in the three-month period ending on the immediately preceding valuation date.

b. (1) Every public depository having public funds on deposit therein in excess of \$200,000,000 that are not insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories shall maintain, as security for such excess, uninsured deposits, eligible collateral having a market value at least equal to 100% of the average daily balance of those collected, uninsured public funds on deposit during the three-month period ending on the immediately preceding valuation date, or, at the election of the depository, at least equal to 100% of the average balance of those collected, uninsured public funds on deposit on the first, eighth, fifteenth and twenty-second days of each month in the three-month period ending on the immediately preceding valuation date.

(2) A public depository shall not at any time receive and hold on deposit for any period in excess of 15 days public funds of a governmental unit or governmental units which, in the aggregate, exceed 75% of the capital funds of the depository, unless such depository shall, in addition to the security required to be maintained under this section, secure such excess by eligible collateral with a market value at least equal to 100% of such excess.

4 Section 4 of P.L.1970, c.236 (C.17:9-44) is amended to read as follows:

C.17:9-44 Amount of collateral required as security; exceptions.

4. a. (1) No public depository, notwithstanding the collateral requirements set forth under section 3 of P.L.2009, c.326 (C.17:9-43.1), shall be required to maintain any eligible collateral pursuant to this act as security for any deposit or deposits of any governmental unit to the extent that such deposit or deposits are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories.

(2) In the case of any public depository which has not held public funds on deposit for all of a three-month period as measured pursuant to the provisions of section 3 of P.L.2009, c.326 (C.17:9-43.1), the commissioner shall, notwithstanding the provisions of that section, prescribe the amount of eligible collateral required to be maintained.

(3) Depositories shall have the right to make substitutions of eligible collateral at any time. The income from eligible collateral shall belong to the public depository without restriction.

b. (Deleted by amendment, P.L.2009, c.326)

c. All collateral required to be maintained shall be deposited with any Federal Reserve Bank or Federal Home Loan Bank, or any other banking institution located in this State or a contiguous state as authorized by regulation of the commissioner, and which has capital funds of not less than \$25,000,000.00. Notwithstanding the foregoing, the commissioner may authorize public depositories to hold and maintain the required collateral in such a manner as he deems consistent with the purposes of this act.

d. The market value of eligible collateral maintained pursuant to this section on any valuation date shall be presumed to be the market value of such collateral continuing until the next succeeding valuation date.

5. Section 3 of P.L.1970, c.236 (C.17:9-43) is amended to read as follows:

C.17:9-43 Powers of commissioner.

3. The commissioner shall have power:

a. To require any public depository to furnish financial information on a quarterly basis, due on the same day as the due date for filing a call report on a depository's overall condition under federal or state law with the appropriate federal banking agency or state bank supervisor, as defined by subsections (q) and (r) of section 3 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1813(q) and (r)); however, the commissioner shall prescribe filing dates on a quarterly basis, if the applicable federal or state law reporting requirements no longer require the filing of a call report on a quarterly basis. This information shall be furnished on a form and in a format as the commissioner shall prescribe by regulation. The information shall include, but not be limited to, public funds on deposit, eligible collateral pledged as security for public funds on deposit, measurements of capital adequacy or ratios, and liquidity, as well as such other information as the commissioner shall request. Any public depository which refuses or neglects to give any information so requested may be excluded by the commissioner from the right to receive public funds for deposit until such time as the commissioner shall acknowledge that such depository has furnished the information requested;

b. To take such action as the commissioner deems best for the protection, collection, compromise, or settlement of any claim arising in case of an event of default;

c. To fix the date on which an event of default shall be deemed to have occurred, taking into consideration the orders, rules and regulations of any supervisory authority as they affect the failure or inability of a public depository to repay public funds held on deposit;

d. Upon the happening of an event of default, to take possession of and liquidate the collateral of the defaulting depository maintained pursuant to section 4 of this act;

e. To do all acts required to carry out the purposes of this act and, to that end, to make, amend and repeal regulations consistent with this act;

f. To engage the services of one or more consultants, advisors, or other experts deemed necessary by the commissioner to assist in carrying out the administration and enforcement of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);

g. To require any public depository with public funds on deposit: (1) to authorize the release of its most recent examination report, prepared by the depository's appropriate federal banking agency or state bank supervisor, as defined by subsections (q) and (r) of section 3 of the "Federal Deposit Insurance Act," Pub.L.81-797 (12 U.S.C. s.1813(q) and (r)), to the commissioner, or otherwise furnish a certified copy thereof; or

(2) if the report or copy thereof described in paragraph (1) of this subsection is not available, to submit (a) an annual certification from the depository's outside auditor, stating that the depository is in compliance with the requirements of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.), including all collateral requirements, or (b) any other annual statement already required by federal or state law, deemed acceptable by the commissioner, stating the depository's compliance as required by this paragraph;

h. To designate any information obtained by, or disclosed to, the commissioner under the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.), as confidential and not a public record subject to public inspection, examination, or copying under the provisions of P.L.1963, c.73 (C.47:1A-1 et seq.);

i. To require any public depository, other than a public depository paying assessments pursuant to section 3 of P.L.2005, c.199 (C.17:1C-35), to pay to the commissioner, through electronic means, an annual fee to be dedicated to the operations of the department in connection with the administration and enforcement of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.). This fee shall be prescribed by the commissioner by regulation and based on the amount of public funds on deposit in the public depository, but shall not exceed \$500 for any public depository with only public funds on deposit that are insured by the Federal Deposit Insurance Corporation or by any other agency of the United States which insures deposits made in public depositories, or \$6,000 for any public depository with \$1,000,000,000 or more in public funds on deposit.

6. Section 7 of P.L.1970, c.236 (C.17:9-47) is amended to read as follows:

C.17:9-47 Operative date.

7. The provisions of this act shall become operative on December 1, 1970, but the commissioner may issue appropriate regulations in advance thereof. The provisions of P.L.2009, c.326 (C.17:9-43.1 et al.), amending and supplementing the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.), shall become operative on July 1, 2010, but the commissioner may issue appropriate regulations in advance thereof.

7. Section 13 of P.L.2005, c.199 (C.17:1C-45) is amended to read as follows:

C.17:1C-45 Exemption from certain fees and charges; remittance.

13. a. Notwithstanding any law or regulation to the contrary, a regulated entity paying the amounts assessed to it in statements of the assessment made pursuant to section 3 of this act shall be exempt from all fees or charges imposed by the division pursuant to any other provision of law or regulation, except for:

- (1) charter fees;
- (2) application fees for licenses;
- (3) (Deleted by amendment, P.L.2009, c.53)
- (4) fees for entry by a foreign depository institution whether from another state of the United States or from another country into New Jersey for branch, trust or other activities;
- (5) (Deleted by amendment, P.L.2009, c.326)
- (6) fees charged any entity not chartered, licensed or registered by this State, including but not limited to activities conducted by foreign banks pursuant to section 316 of P.L.1948, c.67 (C.17:9A-316) or foreign associations pursuant to section 214 of P.L.1963, c.144 (C.17:12B-214); and
- (7) fees charged qualified corporations authorized pursuant to section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either registrar and transfer agent activities or activities permitted for qualified educational institutions.

b. Nothing in this section shall exempt a regulated entity from paying any fine or penalty imposed by the commissioner for a violation of a statute or regulation.

c. Except as provided in paragraph (1) of subsection d. of section 7 of the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-28), and subsection i. of section 3 of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-43), all fees, charges, fines and penalties as described in subsections a. and b. of this subsection shall be remitted to the State Treasurer for deposit into the General Fund, and those fees, charges, fines and penalties shall not be part of the assessment funding mechanism or considered in the calculation pursuant to section 15 of this act.

8. This act shall take effect immediately.

Approved January 18, 2010.