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Kettering
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HSB 223

COMMERCE AND REGULATION

Succeeded by
HF 1281

HOUSE FILE

BY (PROPOSED COMMITTEE ON

COMMERCE AND REGULATION

BILL BY CHAIRPERSON HANSEN)

Passed House, Date _____

Passed Senate, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act requiring the pledging of collateral in relation to the
2 deposit of uninsured public funds, making related changes,
3 making penalties applicable, and providing for applicability.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 12C.1, subsection 2, Code 2001, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. g. "Public officer" means the person
4 authorized by and acting for a public body to deposit public
5 funds of the public body.

6 NEW PARAGRAPH. h. "Uninsured public funds" means any
7 amount of public funds of a public funds depositor on deposit
8 in an account at a financial institution that exceeds the
9 amount of public funds in that account that are insured by the
10 federal deposit insurance corporation or the national credit
11 union administration.

12 Sec. 2. Section 12C.2, Code 2001, is amended to read as
13 follows:

14 12C.2 APPROVAL -- REQUIREMENTS.

15 The approval of a financial institution as a depository of
16 public funds for a public body shall be by written resolution
17 or order which that shall be entered of record in the minutes
18 of the approving board, and which that shall distinctly name
19 each depository approved, and specify the maximum amount which
20 that may be kept on deposit in each depository.

21 Sec. 3. Section 12C.6A, subsection 3, paragraph b, Code
22 2001, is amended to read as follows:

23 b. To receive challenges from any person to a financial
24 institution's continued eligibility to receive **state public**
25 funds.

26 Sec. 4. Section 12C.19, subsection 1, Code 2001, is
27 amended to read as follows:

28 1. Securities pledged pursuant to this chapter may be
29 withdrawn on application of the pledging depository
30 institution, and as to securities pledged by a credit union,
31 upon approval of the public officer to whom the securities are
32 pledged, if the deposit of securities is no longer necessary
33 to comply with this chapter, or is required for collection by
34 virtue of its maturity or for exchange. The depository
35 institution shall replace securities so withdrawn for

1 collection or exchange.

2 Sec. 5. NEW SECTION. 12C.20 PUBLIC FUND REPORTS.

3 1. On or before the tenth day of November, February, May,
4 and August of each year, each bank shall calculate and certify
5 to the superintendent of banking in the form prescribed by the
6 superintendent the minimum amount of its uninsured public
7 funds that must at all times during the next calendar quarter
8 be secured by collateral pledged to the treasurer of state
9 under section 12C.22.

10 2. The superintendent may at any time make such
11 investigation as the superintendent deems necessary and
12 appropriate to verify the information provided to the
13 superintendent pursuant to subsection 1.

14 3. On or before the twentieth day of December, March,
15 June, and September of each year, the superintendent shall
16 notify the treasurer of state of the minimum amount of
17 collateral that must at all times be pledged by each bank to
18 the treasurer of state during the next calendar quarter.

19 Sec. 6. NEW SECTION. 12C.22 REQUIRED COLLATERAL --
20 BANKS.

21 1. A financial institution that is a bank shall pledge to
22 the treasurer of state the amount of collateral required under
23 subsection 2 by depositing the collateral before the first day
24 of each calendar quarter in restricted accounts at a financial
25 institution that has been designated by the treasurer of state
26 and that is not owned or controlled directly or indirectly by
27 the same depository or holding company. Each bank shall
28 execute as debtor and deliver to the treasurer of state a
29 security agreement and such other documents, instruments, and
30 agreements in form approved by the treasurer of state as are
31 required to grant to the treasurer of state, as secured party
32 in its capacity as agent for the depositors of all public
33 funds from time to time deposited in the bank, a perfected
34 security interest in the collateral described in the security
35 agreement. The security agreement shall among other

1 provisions contain all of the following provisions:

2 a. A security interest in the collateral is granted as
3 collateral for the obligation of the bank to repay all
4 uninsured public funds deposited in the bank.

5 b. The security interest in the collateral is also granted
6 as collateral security for the obligation of the bank to repay
7 the uninsured public funds deposited in a closed bank to the
8 extent required under section 12C.23A, subsection 3.

9 c. In the event that the collateral is liquidated and to
10 the extent that the proceeds are used to pay the claim of a
11 public funds depositor in the receivership of a closed bank,
12 the bank whose collateral is liquidated is subrogated to the
13 claim of the public funds depositor.

14 d. The treasurer of state is appointed as agent to assert
15 the claim on behalf of the bank as subrogee. Any amount
16 recovered by the treasurer by reason of the claim shall be
17 deposited in the state sinking fund for public deposits in
18 banks.

19 2. The amount of the required collateral shall not be less
20 than the total of the amount of uninsured public funds
21 deposits in the bank at the end of each of the preceding four
22 calendar quarters divided by four, times the following
23 amounts:

24 a. During the period beginning July 1, 2002, and ending
25 June 30, 2003, twenty percent.

26 b. During the period beginning July 1, 2003, and ending
27 June 30, 2004, thirty-five percent.

28 c. On and after July 1, 2004, fifty percent.

29 3. The amount of collateral pledged by a bank shall be
30 increased as required in order that the amount of collateral
31 pledged by the bank is at all times not less than the
32 applicable percent of uninsured public funds set forth in
33 subsection 2. The value of the collateral shall be its market
34 value.

35 4. The treasurer of state shall adopt rules pursuant to

1 chapter 17A to administer this section, including rules to do
2 the following:

3 a. Establish requirements for reporting by the
4 superintendent to the treasurer of state as to the minimum
5 collateral requirements for each bank.

6 b. Designate not less than four financial institutions
7 that may be custodians of collateral pledged under this
8 chapter.

9 c. Establish requirements for reporting to the treasurer
10 of state by a financial institution of the amount and value of
11 collateral held by the financial institution as custodian of
12 collateral for the uninsured public funds on deposit in a
13 bank.

14 d. Establish procedures for the valuation of collateral
15 that does not have a readily ascertainable market value.

16 e. Establish procedures for substituting different
17 collateral for collateral pledged under this section.

18 f. Establish administrative procedures necessary to
19 administer this chapter and other rules as may be necessary to
20 accomplish the purposes of this chapter.

21 g. Establish amounts and procedures for payment of fees to
22 cover the costs of administration of this chapter.

23 5. The collateral used to secure public deposits shall be
24 in one or more of the following forms acceptable to the
25 treasurer of state:

26 a. Direct obligations of, or obligations that are insured
27 or fully guaranteed as to principal and interest by, the
28 United States of America or an agency or instrumentality of
29 the United States of America, including obligations of
30 government-sponsored enterprises.

31 b. Public bonds or obligations of this state or a
32 political subdivision of this state, including obligations the
33 payment of which is dependent upon revenue from the specific
34 project or fund.

35 c. Public bonds or obligations of another state or a

1 political subdivision of another state whose bonds are rated
2 within the two highest classifications of prime as established
3 by at least one of the standard rating services approved by
4 the superintendent of banking by rule adopted pursuant to
5 chapter 17A.

6 d. Guarantees, loans, obligations, or nontransferable
7 letters of credit upon which the payment of principal and
8 interest is fully secured or guaranteed by the United States
9 of America or an agency or instrumentality including
10 government-sponsored enterprises of the United States of
11 America.

12 e. Letters of credit issued by a federal reserve bank or a
13 federal home loan bank.

14 f. Corporate bonds rated within the two highest
15 classifications of prime as established by at least one of the
16 standard rating services approved by the superintendent by
17 rule adopted pursuant to chapter 17A.

18 g. A bond of a surety company rated within the two highest
19 classifications established by at least one of the standard
20 rating services and approved by the superintendent by rule
21 adopted pursuant to chapter 17A.

22 h. Investments in an open-end management investment
23 company registered with the federal securities and exchange
24 commission under the federal Investment Company Act of 1940,
25 15 U.S.C. § 80(a), which is operated in accordance with 17
26 C.F.R. § 270.2a-7. Direct obligations of, or obligations that
27 are insured or fully guaranteed as to principal and interest
28 by the United States of America, which may be used to secure
29 public deposits under paragraph "a", include investments in an
30 investment company or investment trust registered under the
31 federal Investment Company Act of 1940, 15 U.S.C. § 80(a), the
32 portfolio of which is limited to the United States government
33 obligations described in paragraph "a", if the investment
34 company or investment trust takes delivery of the collateral
35 either directly or through an authorized custodian.

1 6. A bank may borrow collateral used for a pledge if the
2 collateral is free of any liens, security interests, claims,
3 or encumbrances.

4 Sec. 7. Section 12C.23A, Code 2001, is amended to read as
5 follows:

6 12C.23A PAYMENT OF LOSSES IN A BANK.

7 1. The acceptance of public funds and the pledging of
8 securities by a bank pursuant to this chapter constitutes
9 consent all of the following:

10 a. Consent by the bank to the disposition of securities in
11 accordance with this section.

12 b. Consent by the bank to assessments by the treasurer of
13 state in accordance with this chapter.

14 c. Agreement by the bank to provide accurate information
15 and to otherwise comply with the requirements of this chapter.

16 2. The A bank is liable for payment if the bank fails to
17 pay a check, draft, or warrant drawn by ~~the-public-officer~~ a
18 public funds depositor or to account for a check, draft,
19 warrant, order, or certificates of deposit, or any public
20 funds entrusted to it the bank if, in failing to pay, the bank
21 acts contrary to the terms of an agreement between the bank
22 and the public ~~body-treasurer~~ funds depositor. The bank is
23 also liable to the treasurer of state for payment if the bank
24 fails to pay an assessment by the treasurer of state when the
25 assessment is due.

26 3. If a bank is closed by its primary regulatory
27 officials, ~~the-public-body~~ each public funds depositor with
28 deposits in the bank shall notify the treasurer of state of
29 the amount of any claim within thirty days of the closing.
30 The treasurer of state shall implement the following
31 procedures:

32 a. In cooperation with the responsible regulatory
33 officials for the closed bank, the treasurer shall validate
34 the amount of public funds on deposit at the defaulting closed
35 bank and the amount of deposit insurance applicable to the

1 deposits.

2 b. ~~The-recovery-of-any~~ Any loss to ~~public~~ the public funds
3 depositors shall ~~begin-with-applicable~~ be satisfied first by
4 any federal deposit insurance, then by the sale or other
5 disposition of collateral pledged by the closed bank, then
6 from the assets of the closed bank. ~~The~~ To the extent
7 permitted by federal law, the priority of claims are those
8 established pursuant to section 524.1312, subsection 2. To
9 the extent permitted by federal law, in the distribution of an
10 insolvent federally chartered bank's assets, the order of
11 payment of liabilities, if its assets are insufficient to pay
12 in full all its liabilities for which claims are made, shall
13 be in the same order as for a ~~state-chartered~~ state bank as
14 provided in section 524.1312, subsection 2.

15 c. The claim of a public funds depositor for purposes of
16 this section shall be the amount of the depositor's public
17 funds deposits plus interest to the date the funds are
18 distributed to the public funds depositor at the rate the bank
19 agreed to pay on the public funds reduced by the portion of
20 the public funds which that is insured by federal deposit
21 insurance.

22 d. If the loss ~~to~~ of public funds is not covered by
23 federal deposit insurance and the proceeds of the ~~failed~~
24 closed bank's assets which that are liquidated within thirty
25 days of the closing of the bank are not sufficient to cover
26 the loss, then any further payments to cover the loss will
27 come from the state sinking fund for public deposits in banks.
28 If the balance in that sinking fund is inadequate to pay the
29 entire loss, then the treasurer shall obtain the additional
30 amount needed by making an assessment against other banks
31 whose public funds deposits exceed federal deposit insurance
32 coverage. A bank's assessment shall be determined by
33 multiplying the total amount of the remaining loss to all
34 public depositors in the closed bank by a percentage that
35 represents that the assessed bank's proportional share of the

1 total of uninsured public funds deposits held by all banks,
 2 calculated in the manner provided by section 12C.22,
 3 subsection 2, excluding the amount of uninsured public funds
 4 held by the closed bank at the time of closing. Each bank
 5 shall pay its assessment to the treasurer of state within
 6 three business days after it receives notice of assessment.

7 e. If a bank fails to pay its assessment when due, the
 8 treasurer of state shall ~~initiate a lawsuit to collect~~ satisfy
 9 the assessment by liquidating collateral pledged by the bank
 10 upon such notice as is required by chapter 554. If the
 11 collateral pledged by the bank is inadequate to pay the
 12 assessment, the treasurer of state shall make additional
 13 assessments as may be necessary against other banks that hold
 14 uninsured public funds to satisfy any unpaid assessment. Any
 15 additional assessments shall be determined, collected, and
 16 satisfied in the same manner as the first assessment except
 17 that in calculating that amount of each such additional
 18 assessment, the amount of uninsured public funds held by the
 19 bank that fails to pay the assessment shall not be counted.

20 f. If a bank fails to pay its assessment when due and the
 21 proceeds from liquidation of the collateral pledged by the
 22 bank are not sufficient to pay the assessment against the
 23 bank, the treasurer of state shall notify the superintendent
 24 or the comptroller of the currency, as applicable, of the
 25 failure to pay the assessment and shall initiate a lawsuit to
 26 collect the amount of the assessment. If a bank is found to
 27 have failed to pay the assessment as required by this
 28 paragraph, subsection and is ordered to pay the assessment,
 29 the court shall also order it to that the bank pay the
 30 assessment, court costs, and reasonable attorney fees based on
 31 the amount of time the attorney general's office spent
 32 preparing and bringing the action, and reasonable expenses
 33 incurred by the treasurer of state. ~~Idle balances in the fund~~
 34 ~~shall be invested by the treasurer with earnings credited to~~
 35 ~~the fund. -- Fees paid by banks for administration of this~~

1 ~~chapter shall be credited to the fund and the treasurer may~~
2 ~~deduct actual costs of administration from the fund.~~

3 e. g. Following collection of the assessments, the state
4 treasurer of state shall distribute funds to the public
5 depositors of the ~~failed~~ closed bank according to their
6 validated claims. ~~if the assets available are less than the~~
7 ~~total deposits, the treasurer shall prorate the claims. A~~
8 ~~public depositor~~ By receiving payment under this section, a
9 public depositor shall assign be deemed to have assigned to
10 the treasurer any interest rights the public depositor may
11 have in funds that subsequently become available to depositors
12 of the defaulting closed bank.

13 Sec. 8. Section 12C.24, Code 2001, is amended to read as
14 follows:

15 12C.24 LIABILITY.

16 When public deposits are made in accordance with this
17 chapter, a public body depositing public funds or its agents,
18 employees, officers, and board members are exempt from
19 liability for any loss resulting from the loss of a depository
20 in the absence of negligence, malfeasance, misfeasance, or
21 nonfeasance on the part of the official. If the treasurer of
22 state ~~sells a depository's~~ liquidates collateral securities
23 pledged by a bank, the depository bank shall within ten days
24 following receipt of notice from the treasurer of state
25 deposit additional collateral to meet required collateral
26 levels.

27 In making an assessment against depositories banks holding
28 public funds as a result of a failure bank closure, the
29 treasurer of state is exempt from any liability for loss,
30 damage, or expense to a depository which bank that has
31 accepted public funds.

32 Sec. 9. Section 12C.25, Code 2001, is amended by adding
33 the following new unnumbered paragraph after subsection 2:

34 NEW UNNUMBERED PARAGRAPH. Idle balances in the state
35 sinking fund for public deposits in banks shall be invested by

1 the treasurer of state with earnings credited to that fund.
2 Fees paid by banks for administration of this chapter shall be
3 credited to the state sinking fund for public deposits in
4 banks and the treasurer of state may deduct actual costs of
5 administration from that fund.

6 Sec. 10. NEW SECTION. 12C.27 FAILURE TO MAINTAIN
7 REQUIRED COLLATERAL.

8 If a bank fails to maintain the amount of collateral
9 subject to a perfected security interest held by the treasurer
10 of state required to comply with section 12C.22, subsections 2
11 and 3, the treasurer of state shall notify the bank of the
12 amount of additional collateral required. If the bank fails
13 to provide the additional required collateral within ten days
14 following the date the notice is given, the treasurer shall
15 notify the office of thrift supervision, the office of the
16 comptroller of the currency, or the superintendent as
17 applicable, who may take such action against the bank, its
18 board of directors and officers as permitted by law.

19 Sec. 11. NEW SECTION. 12C.28 ELECTRONIC REPORTING.

20 Any notice, information, report, or other communication
21 required by this chapter shall be deemed effective and in
22 compliance with this chapter if sent or given electronically
23 as provided in rules adopted pursuant to chapter 17A by the
24 superintendent or the treasurer of state.

25 Sec. 12. Section 524.213, Code 2001, is amended to read as
26 follows:

27 524.213 DUTIES AND POWERS OF SUPERINTENDENT.

28 The superintendent shall have general control, supervision
29 and regulation of all state banks and shall be charged with
30 the administration and execution of the laws of this state
31 relating to banks and banking and with such other duties and
32 responsibilities as are imposed upon the superintendent by the
33 laws of this state. The superintendent shall have power to
34 adopt and promulgate such rules and regulations as in the
35 superintendent's opinion will be necessary to properly and

1 effectively carry out and enforce the provisions of this
2 chapter and chapter 12C. Rules relating to the administration
3 of chapter 12C may include such procedures as the
4 superintendent deems necessary and appropriate to enable a
5 bank to attain compliance with the requirements of chapter 12C
6 and such penalties for noncompliance with chapter 12C as the
7 superintendent deems appropriate including, without
8 limitation, the sanctions provided under section 524.223.

9 Sec. 13. Section 524.223, Code 2001, is amended to read as
10 follows:

11 524.223 POWER OF SUPERINTENDENT TO ISSUE ORDERS.

12 1. Whenever it shall appear to the superintendent that a
13 state bank is engaging or has engaged, or the superintendent
14 has reasonable cause to believe that the state bank is about
15 to engage, in an unsafe or unsound practice in conducting the
16 business of such state bank, or is violating or has violated,
17 or the superintendent has reasonable cause to believe that the
18 state bank is about to violate, any provision of this chapter
19 or of any regulation adopted pursuant to this chapter, or any
20 condition imposed in writing by the superintendent in
21 connection with the approval of any matter required by this
22 chapter, or any written agreement entered into with the
23 superintendent, or any provision of chapter 12C or any rules
24 adopted pursuant to chapter 12C, the superintendent may issue
25 and serve upon the state bank a notice containing a statement
26 of the facts constituting the alleged violation or violations,
27 or the unsafe or unsound practice or practices, and fixing a
28 time and place at which a hearing will be held to determine
29 whether an order to cease and desist ~~therefrom~~ should be
30 issued to the state bank.

31 2. If the state bank fails to appear at the hearing it
32 shall be deemed to have consented to the issuance of a cease
33 and desist order. In the event of such consent, or if upon
34 the record made at such hearing, the superintendent shall find
35 that any violation or unsafe or unsound practice specified in

1 the notice has been established, the superintendent may issue
2 and serve upon the bank an order to cease and desist from any
3 such violation or practice. Such order may require the state
4 bank and its directors, officers and employees to cease and
5 desist from any such violation or practice and, further, to
6 take affirmative action to correct the conditions resulting
7 from any such violation or practice. In addition, if the
8 violation or practice involves a failure to comply with
9 chapter 12C or any rules adopted pursuant to chapter 12C, the
10 superintendent may require that during the current calendar
11 quarter and the next succeeding eight calendar quarters that
12 the bank do one of the following:

13 a. Return to the depositors some or all uninsured public
14 funds.

15 b. Pledge up to an amount equal to one hundred ten percent
16 of the uninsured public funds held by the bank, calculated in
17 the same manner as provided by section 12C.20, subsection 1.

18 3. Any order issued pursuant to this section shall become
19 effective upon service thereof of the order on the state bank
20 and shall remain effective except to such extent that it is
21 stayed, modified, terminated, or set aside by action of the
22 superintendent or of the district court of the county in which
23 the state bank has its principal place of business.

24 4. The superintendent may apply to the district court of
25 the county in which the state bank has its principal place of
26 business for the enforcement of any order pursuant to this
27 section and such court shall have jurisdiction and power to
28 order and require compliance therewith.

29 **Sec. 14. EFFECTIVE DATE AND APPLICABILITY.** This Act takes
30 effect on July 1, 2001, with the following exceptions:

31 1. Certification to the superintendent under section
32 12C.20, subsection 1, shall not be required until February 10,
33 2002.

34 2. Notification by the superintendent to the treasurer of
35 state under section 12C.20, subsection 3, shall not be

1 required until June 20, 2002.

2 3. The pledging of collateral to the treasurer of state
3 pursuant to section 12C.22 shall not be required until July 1,
4 2002.

5 EXPLANATION

6 This bill primarily makes changes to Code chapter 12C, to
7 provide for collateral in relation to the deposit of public
8 funds.

9 The bill adds new definitions to Code section 12C.1
10 regarding "public officer" and "uninsured public funds".

11 The bill amends Code section 12C.2, to provide that
12 approval of a financial institution as a depository of public
13 funds for a public body shall be by written resolution or
14 order entered in the minutes of the approving board, with the
15 name of each depository and the maximum amount that may be
16 kept on deposit in each depository.

17 The bill amends Code section 12C.6A by deleting the word
18 "state", in referring to public funds.

19 The bill amends Code section 12C.19 by adding a reference
20 to securities pledged by a credit union.

21 The bill adds new Code section 12C.20, regarding public
22 fund reports to be filed periodically by banks with the
23 superintendent of banking regarding the amount of uninsured
24 public funds that must be secured by collateral pledged to the
25 treasurer of state during the next calendar quarter. The
26 superintendent may make investigation as necessary to verify
27 the information, and is required to notify the treasurer of
28 state regarding the collateral that must be pledged by each
29 bank during the calendar quarter.

30 The bill adds new Code section 12C.22, which addresses the
31 requirements regarding collateral that must be pledged by a
32 bank to the treasurer of state during each calendar quarter in
33 respect to the bank's uninsured public funds deposits. The
34 bill requires that the bank execute a security agreement, with
35 the treasurer of state as the secured party. The agreement

1 must contain at least the following provisions: (1) a
 2 security interest in the collateral is granted as collateral
 3 for the obligation of the bank to repay all uninsured public
 4 funds deposited in the bank; (2) the security interest in the
 5 collateral is also granted as collateral security for the
 6 obligation of the bank to repay the uninsured public funds
 7 deposited in a closed bank to the extent required under the
 8 Code chapter 12C; (3) in the event that the collateral is
 9 liquidated and the proceeds used to pay the claim of a public
 10 funds depositor in the receivership of a closed bank, the bank
 11 whose collateral is liquidated is subrogated to the claim of
 12 the public funds depositor; (4) the treasurer of state is
 13 appointed as agent to assert the claim on behalf of the bank
 14 as subrogee; any amount recovered shall be deposited in the
 15 sinking fund for public deposits in banks.

16 The total amount of required collateral will escalate
 17 yearly for three years, beginning after the statute has been
 18 in effect for one year. The minimum amount of collateral
 19 shall be the total of the amount of uninsured public funds
 20 deposits in the bank at the end of each of the four calendar
 21 quarters, divided by four, times the following amounts: (1)
 22 20 percent, from July 1, 2002, through June 30, 2003; (2) 35
 23 percent, from July 1, 2003, through June 30, 2004; and (3) 50
 24 percent, on and after July 1, 2004. Collateral is valued
 25 according to market value. The treasurer of state is directed
 26 to adopt rules related to pledging and reporting of
 27 collateral.

28 New Code section 12C.22 also specifies the kinds of
 29 collateral that may be used to secure public deposits, and
 30 indicates that a bank may borrow collateral used for a pledge
 31 if the collateral is free of any liens, security interest,
 32 claims, or encumbrances.

33 The bill amends Code section 12C.23A, relating to the
 34 payment of losses in a bank, to add references to the pledging
 35 of collateral, and the disposition of collateral pledged by a

1 closed bank. Code section 12C.23A provides that loss to the
2 depositors of public funds shall be satisfied first by any
3 federal deposit insurance, then by the sale or other
4 disposition of collateral pledged by the closed bank, then
5 from the assets of the closed bank. If the assets are
6 insufficient to cover the loss, further payments come from the
7 state sinking fund for public deposits in banks. If that fund
8 is inadequate, the treasurer of state shall make an assessment
9 against other banks whose public funds deposits exceed federal
10 deposit insurance coverage. The bill changes some of the
11 language regarding the calculation of this assessment, and
12 inserts new language regarding what is done if a bank fails to
13 pay its assessment when due.

14 The bill amends Code section 12C.24, to refer to
15 liquidation of collateral pledged by a bank, and the deposit
16 of additional collateral within 10 days of notice from the
17 treasurer of state to meet required levels.

18 The bill adds a new paragraph to Code section 12C.25, to
19 require the treasurer of state to invest idle balances in the
20 state sinking fund for public deposits in banks, and to credit
21 earnings to that fund. Fees paid by banks for the
22 administration of Code chapter 12C shall be credited to the
23 state sinking fund, and the treasurer may deduct actual costs
24 of administration from the fund. This language previously was
25 contained in Code section 12C.23A.

26 The bill adds new Code section 12C.27 that addresses the
27 procedures when a bank fails to maintain the required
28 collateral levels. The treasurer of state is required to give
29 the bank notice and opportunity to pledge the additional
30 required collateral, or else the treasurer shall notify the
31 office of thrift supervision, the comptroller of the currency,
32 or the superintendent, as applicable, who may take such action
33 permitted by law.

34 The bill adds new Code section 12C.28, which allows any
35 notice, report, or other communication required by Code

1 chapter 12C to be deemed effective if sent or given
2 electronically, according to regulation by the superintendent
3 and the treasurer of state.

4 The bill amends Code section 524.213, regarding the powers
5 and duties of the superintendent, to specifically refer to
6 Code chapter 12C and related rules and regulations. The bill
7 also amends Code section 524.223, regarding the power of the
8 superintendent to issue orders, to specifically refer to Code
9 chapter 12C, and the right to require that a state bank return
10 some or all uninsured public funds, or pledge up to 110
11 percent of the uninsured public funds held by the bank.

12 The Act takes effect July 1, 2001, but certain portions of
13 the Act have special applicability provisions: (1)
14 certification to the superintendent under Code section 12C.20,
15 subsection 1, is not required until February 10, 2002; (2)
16 notification by the superintendent to the treasurer of state
17 under Code section 12C.20, subsection 3, is not required until
18 June 20, 2002; (3) the pledging of collateral to the treasurer
19 of state shall not be required until July 1, 2002.

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REPRINTED

MAR 22 2001

HOUSE FILE 681

Place On Calendar

BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 223)

Passed House, Date ^(P.953) 3-28-01
Vote: Ayes 97 Nays 0
Approved April 9, 2002

Passed Senate, Date ^{P.437} 2/27/02
Vote: Ayes 48 Nays 0

A BILL FOR

1 An Act requiring the pledging of collateral in relation to the
2 deposit of uninsured public funds, making related changes,
3 making penalties applicable, and providing for applicability.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 681

1 Section 1. Section 12C.1, subsection 2, Code 2001, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. g. "Public officer" means the person
4 authorized by and acting for a public body to deposit public
5 funds of the public body.

6 NEW PARAGRAPH. h. "Uninsured public funds" means any
7 amount of public funds of a public funds depositor on deposit
8 in an account at a financial institution that exceeds the
9 amount of public funds in that account that are insured by the
10 federal deposit insurance corporation or the national credit
11 union administration.

12 Sec. 2. Section 12C.2, Code 2001, is amended to read as
13 follows:

14 12C.2 APPROVAL -- REQUIREMENTS.

15 The approval of a financial institution as a depository of
16 public funds for a public body shall be by written resolution
17 or order which that shall be entered of record in the minutes
18 of the approving board, and which that shall distinctly name
19 each depository approved, and specify the maximum amount which
20 that may be kept on deposit in each depository.

21 Sec. 3. Section 12C.6A, subsection 3, paragraph b, Code
22 2001, is amended to read as follows:

23 b. To receive challenges from any person to a financial
24 institution's continued eligibility to receive **state** public
25 funds.

26 Sec. 4. Section 12C.19, subsection 1, Code 2001, is
27 amended to read as follows:

28 1. Securities pledged pursuant to this chapter may be
29 withdrawn on application of the pledging depository
30 institution, and as to securities pledged by a credit union,
31 upon approval of the public officer to whom the securities are
32 pledged, if the deposit of securities is no longer necessary
33 to comply with this chapter, or is required for collection by
34 virtue of its maturity or for exchange. The depository
35 institution shall replace securities so withdrawn for

1 collection or exchange.

2 Sec. 5. NEW SECTION. 12C.20 PUBLIC FUND REPORTS.

3 1. On or before the tenth day of November, February, May,
4 and August of each year, each bank shall calculate and certify
5 to the superintendent of banking in the form prescribed by the
6 superintendent the minimum amount of its uninsured public
7 funds that must at all times during the next calendar quarter
8 be secured by collateral pledged to the treasurer of state
9 under section 12C.22.

10 2. The superintendent may at any time make such
11 investigation as the superintendent deems necessary and
12 appropriate to verify the information provided to the
13 superintendent pursuant to subsection 1.

14 3. On or before the twentieth day of December, March,
15 June, and September of each year, the superintendent shall
16 notify the treasurer of state of the minimum amount of
17 collateral that must at all times be pledged by each bank to
18 the treasurer of state during the next calendar quarter.

19 Sec. 6. NEW SECTION. 12C.22 REQUIRED COLLATERAL --
20 BANKS.

21 1. A financial institution that is a bank shall pledge to
22 the treasurer of state the amount of collateral required under
23 subsection 2 by depositing the collateral before the first day
24 of each calendar quarter in restricted accounts at a financial
25 institution that has been designated by the treasurer of state
26 and that is not owned or controlled directly or indirectly by
27 the same depository or holding company. Each bank shall
28 execute as debtor and deliver to the treasurer of state a
29 security agreement and such other documents, instruments, and
30 agreements in form approved by the treasurer of state as are
31 required to grant to the treasurer of state, as secured party
32 in its capacity as agent for the depositors of all public
33 funds from time to time deposited in the bank, a perfected
34 security interest in the collateral described in the security
35 agreement. The security agreement shall among other

1 provisions contain all of the following provisions:

2 a. A security interest in the collateral is granted as
3 collateral for the obligation of the bank to repay all
4 uninsured public funds deposited in the bank.

5 b. The security interest in the collateral is also granted
6 as collateral security for the obligation of the bank to repay
7 the uninsured public funds deposited in a closed bank to the
8 extent required under section 12C.23A, subsection 3.

9 c. In the event that the collateral is liquidated and to
10 the extent that the proceeds are used to pay the claim of a
11 public funds depositor in the receivership of a closed bank,
12 the bank whose collateral is liquidated is subrogated to the
13 claim of the public funds depositor.

14 d. The treasurer of state is appointed as agent to assert
15 the claim on behalf of the bank as subrogee. Any amount
16 recovered by the treasurer by reason of the claim shall be
17 deposited in the state sinking fund for public deposits in
18 banks.

19 2. The amount of the required collateral shall not be less
20 than the total of the amount of uninsured public funds
21 deposits in the bank at the end of each of the preceding four
22 calendar quarters divided by four, times twenty-five percent,
23 effective on and after July 1, 2002.

24 3. The amount of collateral pledged by a bank shall be
25 increased as required in order that the amount of collateral
26 pledged by the bank is at all times not less than the
27 applicable percent of uninsured public funds set forth in
28 subsection 2. The value of the collateral shall be its market
29 value.

30 4. The treasurer of state shall adopt rules pursuant to
31 chapter 17A to administer this section, including rules to do
32 the following:

33 a. Establish requirements for reporting by the
34 superintendent to the treasurer of state as to the minimum
35 collateral requirements for each bank.

1 b. Designate not less than four financial institutions
2 that may be custodians of collateral pledged under this
3 chapter.

4 c. Establish requirements for reporting to the treasurer
5 of state by a financial institution of the amount and value of
6 collateral held by the financial institution as custodian of
7 collateral for the uninsured public funds on deposit in a
8 bank.

9 d. Establish procedures for the valuation of collateral
10 that does not have a readily ascertainable market value.

11 e. Establish procedures for substituting different
12 collateral for collateral pledged under this section.

13 f. Establish administrative procedures necessary to
14 administer this chapter and other rules as may be necessary to
15 accomplish the purposes of this chapter.

16 g. Establish amounts and procedures for payment of fees to
17 cover the costs of administration of this chapter.

18 5. The collateral used to secure public deposits shall be
19 in one or more of the following forms acceptable to the
20 treasurer of state:

21 a. Direct obligations of, or obligations that are insured
22 or fully guaranteed as to principal and interest by, the
23 United States of America or an agency or instrumentality of
24 the United States of America, including obligations of
25 government-sponsored enterprises.

26 b. Public bonds or obligations of this state or a
27 political subdivision of this state, including obligations the
28 payment of which is dependent upon revenue from the specific
29 project or fund.

30 c. Public bonds or obligations of another state or a
31 political subdivision of another state whose bonds are rated
32 within the two highest classifications of prime as established
33 by at least one of the standard rating services approved by
34 the superintendent of banking by rule adopted pursuant to
35 chapter 17A.

1 d. Guarantees, loans, obligations, or nontransferable
2 letters of credit upon which the payment of principal and
3 interest is fully secured or guaranteed by the United States
4 of America or an agency or instrumentality including
5 government-sponsored enterprises of the United States of
6 America.

7 e. Letters of credit issued by a federal reserve bank or a
8 federal home loan bank.

9 f. Corporate bonds rated within the two highest
10 classifications of prime as established by at least one of the
11 standard rating services approved by the superintendent by
12 rule adopted pursuant to chapter 17A.

13 g. A bond of a surety company rated within the two highest
14 classifications established by at least one of the standard
15 rating services and approved by the superintendent by rule
16 adopted pursuant to chapter 17A.

17 h. Investments in an open-end management investment
18 company registered with the federal securities and exchange
19 commission under the federal Investment Company Act of 1940,
20 15 U.S.C. § 80(a), which is operated in accordance with 17
21 C.F.R. § 270.2a-7. Direct obligations of, or obligations that
22 are insured or fully guaranteed as to principal and interest
23 by the United States of America, which may be used to secure
24 public deposits under paragraph "a", include investments in an
25 investment company or investment trust registered under the
26 federal Investment Company Act of 1940, 15 U.S.C. § 80(a), the
27 portfolio of which is limited to the United States government
28 obligations described in paragraph "a", if the investment
29 company or investment trust takes delivery of the collateral
30 either directly or through an authorized custodian.

31 6. A bank may borrow collateral used for a pledge if the
32 collateral is free of any liens, security interests, claims,
33 or encumbrances.

34 Sec. 7. Section 12C.23A, Code 2001, is amended to read as
35 follows:

1 12C.23A PAYMENT OF LOSSES IN A BANK.

2 1. The acceptance of public funds and the pledging of
3 securities by a bank pursuant to this chapter constitutes
4 consent all of the following:

5 a. Consent by the bank to the disposition of securities in
6 accordance with this section.

7 b. Consent by the bank to assessments by the treasurer of
8 state in accordance with this chapter.

9 c. Agreement by the bank to provide accurate information
10 and to otherwise comply with the requirements of this chapter.

11 2. ~~The~~ A bank is liable for payment if the bank fails to
12 pay a check, draft, or warrant drawn by ~~the-public-officer~~ a
13 public funds depositor or to account for a check, draft,
14 warrant, order, or certificates of deposit, or any public
15 funds entrusted to it the bank if, in failing to pay, the bank
16 acts contrary to the terms of an agreement between the bank
17 and the public ~~body-treasurer~~ funds depositor. The bank is
18 also liable to the treasurer of state for payment if the bank
19 fails to pay an assessment by the treasurer of state when the
20 assessment is due.

21 3. If a bank is closed by its primary regulatory
22 officials, ~~the-public-body~~ each public funds depositor with
23 deposits in the bank shall notify the treasurer of state of
24 the amount of any claim within thirty days of the closing.
25 The treasurer of state shall implement the following
26 procedures:

27 a. In cooperation with the responsible regulatory
28 officials for the closed bank, the treasurer shall validate
29 the amount of public funds on deposit at the ~~defaulting~~ closed
30 bank and the amount of deposit insurance applicable to the
31 deposits.

32 b. ~~The-recovery-of-any~~ Any loss to ~~public~~ the public funds
33 depositors shall ~~begin-with-applicable~~ be satisfied first by
34 any federal deposit insurance, then by the sale or other
35 disposition of collateral pledged by the closed bank, then

1 from the assets of the closed bank. ~~The~~ To the extent
2 permitted by federal law, the priority of claims are those
3 established pursuant to section 524.1312, subsection 2. To
4 the extent permitted by federal law, in the distribution of an
5 insolvent federally chartered bank's assets, the order of
6 payment of liabilities, if its assets are insufficient to pay
7 in full all its liabilities for which claims are made, shall
8 be in the same order as for a ~~state-chartered~~ state bank as
9 provided in section 524.1312, subsection 2.

10 c. The claim of a public funds depositor for purposes of
11 this section shall be the amount of the depositor's public
12 funds deposits plus interest to the date the funds are
13 distributed to the public funds depositor at the rate the bank
14 agreed to pay on the public funds reduced by the portion of
15 the public funds ~~which~~ that is insured by federal deposit
16 insurance.

17 d. If the loss ~~to~~ of public funds is not covered by
18 federal deposit insurance and the proceeds of the ~~failed~~
19 closed bank's assets ~~which~~ that are liquidated within thirty
20 days of the closing of the bank are not sufficient to cover
21 the loss, then any further payments to cover the loss will
22 come from the state sinking fund for public deposits in banks.
23 If the balance in that sinking fund is inadequate to pay the
24 entire loss, then the treasurer shall obtain the additional
25 amount needed by making an assessment against other banks
26 whose public funds deposits exceed federal deposit insurance
27 coverage. A bank's assessment shall be determined by
28 multiplying the total amount of the remaining loss to all
29 public depositors in the closed bank by a percentage that
30 represents ~~that~~ the assessed bank's proportional share of the
31 total of uninsured public funds deposits held by all banks,
32 calculated in the manner provided by section 12C.22,
33 subsection 2, excluding the amount of uninsured public funds
34 held by the closed bank at the time of closing. Each bank
35 shall pay its assessment to the treasurer of state within

1 three business days after it receives notice of assessment.

2 e. If a bank fails to pay its assessment when due, the
3 treasurer of state shall ~~initiate a lawsuit to collect~~ satisfy
4 the assessment by liquidating collateral pledged by the bank
5 upon such notice as is required by chapter 554. If the
6 collateral pledged by the bank is inadequate to pay the
7 assessment, the treasurer of state shall make additional
8 assessments as may be necessary against other banks that hold
9 uninsured public funds to satisfy any unpaid assessment. Any
10 additional assessments shall be determined, collected, and
11 satisfied in the same manner as the first assessment except
12 that in calculating that amount of each such additional
13 assessment, the amount of uninsured public funds held by the
14 bank that fails to pay the assessment shall not be counted.

15 f. If a bank fails to pay its assessment when due and the
16 proceeds from liquidation of the collateral pledged by the
17 bank are not sufficient to pay the assessment against the
18 bank, the treasurer of state shall notify the superintendent
19 or the comptroller of the currency, as applicable, of the
20 failure to pay the assessment and shall initiate a lawsuit to
21 collect the amount of the assessment. If a bank is found to
22 have failed to pay the assessment as required by this
23 paragraph, subsection and is ordered to pay the assessment,
24 the court shall also order it to that the bank pay the
25 assessment, court costs, and reasonable attorney fees based on
26 the amount of time the attorney general's office spent
27 preparing and bringing the action, and reasonable expenses
28 incurred by the treasurer of state. ~~Idle balances in the fund~~
29 ~~shall be invested by the treasurer with earnings credited to~~
30 ~~the fund.---Fees paid by banks for administration of this~~
31 ~~chapter shall be credited to the fund and the treasurer may~~
32 ~~deduct actual costs of administration from the fund.~~

33 e. g. Following collection of the assessments, the state
34 treasurer of state shall distribute funds to the public
35 depositors of the ~~failed~~ closed bank according to their

1 validated claims. ~~If the assets available are less than the~~
2 ~~total deposits, the treasurer shall prorate the claims. --A~~
3 ~~public depositor~~ By receiving payment under this section, a
4 public depositor shall assign be deemed to have assigned to
5 the treasurer any interest rights the public depositor may
6 have in funds that subsequently become available to depositors
7 of the defaulting closed bank.

8 Sec. 8. Section 12C.24, Code 2001, is amended to read as
9 follows:

10 12C.24 LIABILITY.

11 When public deposits are made in accordance with this
12 chapter, a public body depositing public funds or its agents,
13 employees, officers, and board members are exempt from
14 liability for any loss resulting from the loss of a depository
15 in the absence of negligence, malfeasance, misfeasance, or
16 nonfeasance on the part of the official. If the treasurer of
17 state ~~sells a depository's~~ liquidates collateral securities
18 pledged by a bank, the depository bank shall within ten days
19 following receipt of notice from the treasurer of state
20 deposit additional collateral to meet required collateral
21 levels.

22 In making an assessment against depositories banks holding
23 public funds as a result of a failure bank closure, the
24 treasurer of state is exempt from any liability for loss,
25 damage, or expense to a depository-which bank that has
26 accepted public funds.

27 Sec. 9. Section 12C.25, Code 2001, is amended by adding
28 the following new unnumbered paragraph after subsection 2:

29 NEW UNNUMBERED PARAGRAPH. Idle balances in the state
30 sinking fund for public deposits in banks shall be invested by
31 the treasurer of state with earnings credited to that fund.
32 Fees paid by banks for administration of this chapter shall be
33 credited to the state sinking fund for public deposits in
34 banks and the treasurer of state may deduct actual costs of
35 administration from that fund.

1 Sec. 10. NEW SECTION. 12C.27 FAILURE TO MAINTAIN
2 REQUIRED COLLATERAL.

3 If a bank fails to maintain the amount of collateral
4 subject to a perfected security interest held by the treasurer
5 of state required to comply with section 12C.22, subsections 2
6 and 3, the treasurer of state shall notify the bank of the
7 amount of additional collateral required. If the bank fails
8 to provide the additional required collateral within ten days
9 following the date the notice is given, the treasurer shall
10 notify the office of thrift supervision, the office of the
11 comptroller of the currency, or the superintendent as
12 applicable, who may take such action against the bank, its
13 board of directors and officers as permitted by law.

14 Sec. 11. NEW SECTION. 12C.28 ELECTRONIC REPORTING.

15 Any notice, information, report, or other communication
16 required by this chapter shall be deemed effective and in
17 compliance with this chapter if sent or given electronically
18 as provided in rules adopted pursuant to chapter 17A by the
19 superintendent or the treasurer of state.

20 Sec. 12. Section 524.213, Code 2001, is amended to read as
21 follows:

22 524.213 DUTIES AND POWERS OF SUPERINTENDENT.

23 The superintendent shall have general control, supervision
24 and regulation of all state banks and shall be charged with
25 the administration and execution of the laws of this state
26 relating to banks and banking and with such other duties and
27 responsibilities as are imposed upon the superintendent by the
28 laws of this state. The superintendent shall have power to
29 adopt and promulgate such rules and regulations as in the
30 superintendent's opinion will be necessary to properly and
31 effectively carry out and enforce the provisions of this
32 chapter and chapter 12C.

33 Sec. 13. Section 524.223, Code 2001, is amended to read as
34 follows:

35 524.223 POWER OF SUPERINTENDENT TO ISSUE ORDERS.

1 1. Whenever it shall appear to the superintendent that a
2 state bank is engaging or has engaged, or the superintendent
3 has reasonable cause to believe that the state bank is about
4 to engage, in an unsafe or unsound practice in conducting the
5 business of such state bank, or is violating or has violated,
6 or the superintendent has reasonable cause to believe that the
7 state bank is about to violate, any provision of this chapter
8 or of any regulation adopted pursuant to this chapter, or any
9 condition imposed in writing by the superintendent in
10 connection with the approval of any matter required by this
11 chapter, or any written agreement entered into with the
12 superintendent, or any provision of chapter 12C or any rules
13 adopted pursuant to chapter 12C, the superintendent may issue
14 and serve upon the state bank a notice containing a statement
15 of the facts constituting the alleged violation or violations,
16 or the unsafe or unsound practice or practices, and fixing a
17 time and place at which a hearing will be held to determine
18 whether an order to cease and desist ~~therefrom~~ should be
19 issued to the state bank.

20 2. If the state bank fails to appear at the hearing it
21 shall be deemed to have consented to the issuance of a cease
22 and desist order. In the event of such consent, or if upon
23 the record made at such hearing, the superintendent shall find
24 that any violation or unsafe or unsound practice specified in
25 the notice has been established, the superintendent may issue
26 and serve upon the bank an order to cease and desist from any
27 such violation or practice. Such order may require the state
28 bank and its directors, officers and employees to cease and
29 desist from any such violation or practice and, further, to
30 take affirmative action to correct the conditions resulting
31 from any such violation or practice. In addition, if the
32 violation or practice involves a failure to comply with
33 chapter 12C or any rules adopted pursuant to chapter 12C, the
34 superintendent may require that during the current calendar
35 quarter and the next succeeding eight calendar quarters that

1 the bank do one of the following:

2 a. Return to the depositors some or all uninsured public
3 funds.

4 b. Pledge up to an amount equal to one hundred ten percent
5 of the uninsured public funds held by the bank, calculated in
6 the same manner as provided by section 12C.20, subsection 1.

7 3. Any order issued pursuant to this section shall become
8 effective upon service thereof of the order on the state bank
9 and shall remain effective except to such extent that it is
10 stayed, modified, terminated, or set aside by action of the
11 superintendent or of the district court of the county in which
12 the state bank has its principal place of business.

13 4. The superintendent may apply to the district court of
14 the county in which the state bank has its principal place of
15 business for the enforcement of any order pursuant to this
16 section and such court shall have jurisdiction and power to
17 order and require compliance therewith.

18 Sec. 14. REPORT BY THE BANKING DIVISION. The
19 superintendent of banking shall prepare a report for the
20 general assembly that includes an analysis of the current
21 state sinking fund for public deposits in banks; a comparison
22 of the current statutory assessment process for public funds
23 deposits, a system of pledging of collateral, and other risk-
24 based or non-risk-based alternatives; and such other
25 information or issues as the superintendent deems appropriate
26 and useful to the general assembly in the general assembly's
27 review of the issues and policy alternatives associated with
28 this matter. The report may include any recommendations for
29 changes in existing statutes. The report shall be submitted
30 to the general assembly no later than November 1, 2001.

31 Sec. 15. EFFECTIVE DATE AND APPLICABILITY. This Act takes
32 effect on July 1, 2001, with the following exceptions:

33 1. Certification to the superintendent under section
34 12C.20, subsection 1, shall not be required until February 10,
35 2002.

1 percent collateral requirement is made effective on and after
2 July 1, 2002. The bill requires that the bank execute a
3 security agreement, with the treasurer of state as the secured
4 party. The agreement must contain at least the following
5 provisions: (1) a security interest in the collateral is
6 granted as collateral for the obligation of the bank to repay
7 all uninsured public funds deposited in the bank; (2) the
8 security interest in the collateral is also granted as
9 collateral security for the obligation of the bank to repay
10 the uninsured public funds deposited in a closed bank to the
11 extent required under the Code chapter 12C; (3) in the event
12 that the collateral is liquidated and the proceeds used to pay
13 the claim of a public funds depositor in the receivership of a
14 closed bank, the bank whose collateral is liquidated is
15 subrogated to the claim of the public funds depositor; (4) the
16 treasurer of state is appointed as agent to assert the claim
17 on behalf of the bank as subrogee; any amount recovered shall
18 be deposited in the sinking fund for public deposits in banks.

19 Collateral is valued according to market value. The
20 treasurer of state is directed to adopt rules related to
21 pledging and reporting of collateral.

22 New Code section 12C.22 also specifies the kinds of
23 collateral that may be used to secure public deposits, and
24 indicates that a bank may borrow collateral used for a pledge
25 if the collateral is free of any liens, security interest,
26 claims, or encumbrances.

27 The bill amends Code section 12C.23A, relating to the
28 payment of losses in a bank, to add references to the pledging
29 of collateral, and the disposition of collateral pledged by a
30 closed bank. Code section 12C.23A provides that loss to the
31 depositors of public funds shall be satisfied first by any
32 federal deposit insurance, then by the sale or other
33 disposition of collateral pledged by the closed bank, then
34 from the assets of the closed bank. If the assets are
35 insufficient to cover the loss, further payments come from the

1 state sinking fund for public deposits in banks. If that fund
2 is inadequate, the treasurer of state shall make an assessment
3 against other banks whose public funds deposits exceed federal
4 deposit insurance coverage. The bill changes some of the
5 language regarding the calculation of this assessment, and
6 inserts new language regarding what is done if a bank fails to
7 pay its assessment when due.

8 The bill amends Code section 12C.24, to refer to
9 liquidation of collateral pledged by a bank, and the deposit
10 of additional collateral within 10 days of notice from the
11 treasurer of state to meet required levels.

12 The bill adds a new paragraph to Code section 12C.25, to
13 require the treasurer of state to invest idle balances in the
14 state sinking fund for public deposits in banks, and to credit
15 earnings to that fund. Fees paid by banks for the
16 administration of Code chapter 12C shall be credited to the
17 state sinking fund, and the treasurer may deduct actual costs
18 of administration from the fund. This language previously was
19 contained in Code section 12C.23A.

20 The bill adds new Code section 12C.27 that addresses the
21 procedures when a bank fails to maintain the required
22 collateral levels. The treasurer of state is required to give
23 the bank notice and opportunity to pledge the additional
24 required collateral, or else the treasurer shall notify the
25 office of thrift supervision, the comptroller of the currency,
26 or the superintendent, as applicable, who may take such action
27 permitted by law.

28 The bill adds new Code section 12C.28, which allows any
29 notice, report, or other communication required by Code
30 chapter 12C to be deemed effective if sent or given
31 electronically, according to regulation by the superintendent
32 and the treasurer of state.

33 The bill amends Code section 524.213, regarding the powers
34 and duties of the superintendent, to specifically refer to
35 Code chapter 12C. The bill also amends Code section 524.223,

1 regarding the power of the superintendent to issue orders, to
2 specifically refer to Code chapter 12C, and the right to
3 require that a state bank return some or all uninsured public
4 funds, or pledge up to 110 percent of the uninsured public
5 funds held by the bank.

6 The banking division is directed to prepare and submit a
7 report to the general assembly by November 1, 2001, that
8 includes an analysis of the current state sinking fund for
9 public deposits in banks; a comparison of the current
10 statutory assessment process for public funds deposits, a
11 system of pledging collateral, and other risk-based or non-
12 risk-based alternatives. The report may include
13 recommendations for changes in existing statutes.

14 The Act takes effect July 1, 2001, but certain portions of
15 the Act have special applicability provisions: (1)
16 certification to the superintendent under Code section 12C.20,
17 subsection 1, is not required until February 10, 2002; (2)
18 notification by the superintendent to the treasurer of state
19 under Code section 12C.20, subsection 3, is not required until
20 June 20, 2002; (3) the pledging of collateral to the treasurer
21 of state shall not be required until July 1, 2002.

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HOUSE FILE 681

H-1324

1 Amend House File 681 as follows:

2 1. Page 12, by striking lines 18 through 30 and
3 inserting the following:

4 "Sec. ____ . REPORTS BY THE BANKING DIVISION AND THE
5 CREDIT UNION DIVISION. The superintendent of banking
6 and the superintendent of credit unions shall each
7 prepare a report for the general assembly that
8 includes an analysis of the current state sinking fund
9 for public deposits in banks and the state sinking
10 fund for public deposits in credit unions; a
11 comparison of issues pertaining to the current
12 statutory assessment process for public funds
13 deposits, a system of pledging of collateral, and
14 other risk-based or non-risk-based alternatives; and
15 such other information or issues as the
16 superintendents deem appropriate and useful to the
17 general assembly in the general assembly's review of
18 the issues and policy alternatives associated with
19 this matter. The reports may include recommendations
20 for changes in existing statutes. The report shall be
21 submitted to the general assembly no later than
22 November 1, 2001."

23 2. By renumbering as necessary.

By JOHNSON of Osceola
VAN FOSSEN of Scott

H-1324 FILED MARCH 22, 2001

w/d
3/28/01 (p. 951)

HOUSE FILE 681

H-1336

1 Amend House File 681 as follows:

2 1. Page 1, by inserting before line 1 the
3 following:

4 "Sec. _____. Section 12C.1, subsection 2, paragraphs
5 c and f, Code 2001, are amended to read as follows:

6 c. "Bank" means a corporation engaged in the
7 business of banking authorized by law to receive
8 deposits and whose deposits are insured by the bank
9 insurance fund of the federal deposit insurance
10 corporation and includes any office of a bank. ~~"Bank"~~

11 ~~also means a savings and loan or savings association.~~

12 f. "Financial institution" means a bank, savings
13 and loan, or a credit union."

14 2. Page 1, by inserting after line 11 the
15 following:

16 "Sec. _____. Section 12C.1, subsection 3, paragraph
17 a, Code 2001, is amended to read as follows:

18 a. If a depository is a savings and loan or a
19 credit union, then public deposits in the savings and
20 loan or credit union shall be secured pursuant to
21 sections 12C.16 through 12C.19 and sections 12C.23 and
22 12C.24."

23 3. Page 1, by inserting after line 25 the
24 following:

25 "Sec. _____. Section 12C.6A, subsection 5,
26 paragraphs a, b, c, and d, Code 2001, are amended to
27 read as follows:

28 a. A person who believes a bank or savings and
29 loan has failed to meet its community reinvestment
30 responsibility may file a complaint with the committee
31 detailing the basis for that belief.

32 b. If any committee member, in the member's
33 discretion, finds that the complaint has merit, the
34 member may order the bank or savings and loan alleged
35 to have failed to meet its community reinvestment
36 responsibility to attend and participate in a meeting
37 with the complainant. The committee member may
38 specify who, at minimum, shall represent the ~~bank~~
39 financial institution at the meeting. At the meeting,
40 or at any other time, the ~~bank~~ financial institution
41 may, but is not required to, enter into an agreement
42 with a complainant to correct alleged failings.

43 c. A majority of the committee may order a bank or
44 savings and loan against which a complaint has been
45 filed pursuant to this subsection, to disclose such
46 additional information relating to community
47 reinvestment as required by the order of the majority
48 of the committee.

49 d. This subsection does not preempt any other
50 remedies available under statutory or common law

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1 available to the committee, the superintendent of
2 banking, or aggrieved persons to cure violations of
3 this section, ~~or~~ chapter 524, chapter 534, or rules
4 adopted pursuant to this section, ~~or~~ chapter 524, or
5 chapter 534. The committee may conduct a public
6 hearing as provided in subsection 4 based upon the
7 same complaint. An order finding merit in a complaint
8 and ordering a meeting is not an election of remedies.
9 Sec. _____. Section 12C.15, Code 2001, is amended to
10 read as follows:

11 12C.15 RESTRICTION ON REQUIRING COLLATERAL.

12 A local government shall not require a pledge of
13 collateral for that portion of the local government's
14 deposits in a savings and loan or credit union that is
15 covered by insurance of a federal agency or
16 instrumentality.

17 Sec. _____. Section 12C.16, subsection 1, unnumbered
18 paragraph 1, Code 2001, is amended to read as follows:

19 Before a deposit of public funds is made by a
20 public officer with a savings and loan or credit union
21 in excess of the amount federally insured, the public
22 officer shall obtain security for the deposit by one
23 or more of the following:

24 Sec. _____. Section 12C.16, subsection 1, paragraphs
25 a and b, Code 2001, are amended to read as follows:

26 a. The savings and loan or credit union may give
27 to the public officer a corporate surety bond of a
28 surety corporation approved by the treasury department
29 of the United States and authorized to do business in
30 this state, which bond shall be in an amount equal to
31 the public funds on deposit at any time. The bond
32 shall be conditioned that the deposit shall be paid
33 promptly on the order of the public officer making the
34 deposit and shall be approved by the officer making
35 the deposit.

36 b. The savings and loan or credit union may
37 deposit, maintain, pledge and assign for the benefit
38 of the public officer in the manner provided in this
39 chapter, securities approved by the public officer,
40 the market value of which is not less than one hundred
41 ten percent of the total deposits of public funds
42 placed by that public officer in the savings and loan
43 or credit union. The securities shall consist of any
44 of the following:

45 Sec. _____. Section 12C.16, subsection 2, Code 2001,
46 is amended to read as follows:

47 2. If public funds are secured by both the assets
48 of a savings and loan or credit union and a bond of a
49 surety company, the assets and bond shall be held as
50 security for a rateable proportion of the deposit on

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1 the basis of the market value of the assets and of the
2 total amount of the surety bonds.

3 Sec. _____. Section 12C.17, subsection 1, unnumbered
4 paragraph 1, Code 2001, is amended to read as follows:

5 A savings and loan or credit union ~~which that~~
6 receives public funds shall pledge securities owned by
7 it as required by this chapter in one of the following
8 methods:

9 Sec. _____. Section 12C.17, subsections 3 and 4,
10 Code 2001, are amended to read as follows:

11 3. All deposits of securities, other than deposits
12 of securities with the appropriate public officer,
13 shall have a joint custody receipt taken for the
14 securities with one copy delivered to the public
15 officer and one copy delivered to the savings and loan
16 or credit union. A savings and loan or credit union
17 pledging securities with a public officer may cause
18 the securities to be examined in the officer's office
19 to show the securities are placed with the officer as
20 collateral security and are not transferable except
21 upon the conditions provided in this chapter.

22 4. Upon written request from the appropriate
23 public officer but not less than monthly, the federal
24 home loan bank of Des Moines, Iowa, or the U.S.
25 central credit union, shall report a description, the
26 par value and the market value of any pledged
27 collateral by a savings and loan or credit union.

28 Sec. _____. Section 12C.18, Code 2001, is amended to
29 read as follows:

30 12C.18 CONDITION OF SECURITY.

31 The condition of the surety bond or the deposit of
32 securities, instruments, or a joint custody receipt,
33 must be that the savings and loan or credit union will
34 promptly pay to the parties entitled public funds,
35 including any interest on the funds, in its custody
36 upon lawful demand and, when required by law, pay the
37 funds to the public officer who made the deposit."

38 4. Page 1, line 26, by striking the words and
39 figures "subsection 1, Code 2001, is" and inserting
40 the following: "subsections 1, 3, and 4, Code 2001,
41 are".

42 5. Page 1, line 30, by inserting after the words
43 "pledged by a" the following: "savings and loan or".

44 6. Page 2, by inserting after line 1 the
45 following:

46 "3. In the event of substitution, addition, or
47 exchange of securities, the holder or custodian of the
48 securities shall, on the same day, forward by regular
49 mail to the public officer and the savings and loan or
50 credit union, a receipt specifically describing and

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1 identifying both the substituted or additional
2 securities.

3 4. The public officer which deposits public funds
4 with a savings and loan or credit union shall require,
5 if the market value of the securities deposited with
6 or for the benefit of the officer falls below one
7 hundred ten percent of the deposit liability to the
8 public officer, the deposit of additional security to
9 bring the total market value of the security to one
10 hundred ten percent of the amount of public funds held
11 by the savings and loan or credit union."

12 7. Page 5, by inserting after line 33 the
13 following:

14 "Sec. ____ . Section 12C.23, Code 2001, is amended
15 to read as follows:

16 12C.23 PAYMENT OF LOSSES IN A SAVINGS AND LOAN OR
17 CREDIT UNION.

18 1. The pledging of securities by a savings and
19 loan or credit union pursuant to this chapter
20 constitutes consent by the savings and loan or credit
21 union to the disposition of the securities in
22 accordance with this section.

23 The acceptance of public funds by a savings and
24 loan or credit union pursuant to this chapter
25 constitutes consent by the savings and loan or credit
26 union to assessments by the treasurer of state in
27 accordance with this chapter.

28 2. The savings and loan or credit union and the
29 security given for the public funds in its hands are
30 liable for payment if the savings and loan or credit
31 union fails to pay a check, draft, or warrant drawn by
32 the public officer or to accour. for a check, draft,
33 warrant, order, or certificates of deposit, or any
34 public funds entrusted to it if, in failing to pay,
35 the savings and loan or credit union acts contrary to
36 the terms of an agreement between the savings and loan
37 or credit union and the public body treasurer. The
38 savings and loan or credit union and the security
39 given for the public funds in its hands are also
40 liable for payment if the savings and loan or credit
41 union fails to pay an assessment by the treasurer of
42 state when the assessment is due.

43 3. If a savings and loan or credit union is closed
44 by its primary regulatory officials, the public body
45 with deposits in the savings and loan or credit union
46 may sell the collateral to pay for any loss of
47 principal and accrued interest.

48 a. In cooperation with the responsible regulatory
49 officials for the savings and loan or credit union,
50 the public body shall validate the amount of public

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1 funds on deposit at the defaulting savings and loan or
2 credit union and the amount of deposit insurance
3 applicable to the deposits.

4 b. The loss to public depositors shall be
5 satisfied, first through any applicable deposit
6 insurance and then through the sale of securities
7 pledged by the defaulting savings and loan or credit
8 union, and then the assets of the defaulting savings
9 and loan or credit union. The priority of claims are
10 those established pursuant to section 533.22,
11 subsection 1, paragraph "b", or section 534.517. To
12 the extent permitted by federal law, in the
13 distribution of an insolvent federally chartered
14 credit union's or savings and loan's assets, the order
15 of payment of liabilities if its assets are
16 insufficient to pay in full all its liabilities for
17 which claims are made shall be in the same order as
18 for the equivalent type of state chartered savings and
19 loan or credit union as provided in section 533.22,
20 subsection 1, paragraph "b", or section 534.517.

21 c. The claim of a public depositor for purposes of
22 this section shall be the amount of the depositor's
23 deposits plus interest to the date the funds are
24 distributed to the public depositor at the rate the
25 savings and loan or credit union agreed to pay on the
26 funds reduced by the portion of the funds ~~which~~ that
27 is insured by federal deposit insurance.

28 d. If the loss to public funds is not covered by
29 insurance and the proceeds of the failed savings and
30 loan's or credit union's assets ~~which~~ that are
31 liquidated within thirty days of the closing of the
32 credit union and pledged collateral, the treasurer
33 shall provide coverage of the remaining loss from the
34 state sinking fund for public deposits in credit
35 unions or the state sinking fund for public deposits
36 in savings and loans, according to the following:

37 (1) If the loss was incurred in a credit union,
38 then any further payments to cover the loss shall come
39 from the state sinking fund for public deposits in
40 credit unions. If the funds are inadequate to cover
41 the entire loss, then the treasurer shall make an
42 assessment against other credit unions ~~who~~ that hold
43 public funds. The assessment shall be determined by
44 multiplying the total amount of the remaining loss to
45 public depositors by a percentage that represents the
46 average of public funds deposits held by all credit
47 unions during the preceding twelve-month period ending
48 on the last day of the month immediately preceding the
49 month the credit union was closed. Each credit union
50 shall pay its assessment to the treasurer within three

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1 business days after it receives notice of assessment.
2 If a credit union fails to pay its assessment when
3 due, the treasurer of state shall initiate a lawsuit
4 to collect the assessment. If a credit union is found
5 to have failed to pay the assessment as required by
6 this paragraph, the court shall order it to pay the
7 assessment, court costs, reasonable ~~attorney's~~
8 attorney fees based upon the amount of time the
9 attorney general's office spent preparing and bringing
10 the action, and reasonable expenses incurred by the
11 treasurer of state's office. Idle balances in the
12 fund are to be invested by the treasurer with earnings
13 credited to the fund. Fees paid by credit unions for
14 administration of this chapter will be credited to the
15 fund and the treasurer may deduct actual costs of
16 administration from the fund.

17 (2) If the loss was incurred in a savings and loan
18 or a savings bank, then any further payment to cover
19 the loss shall come from the state sinking fund for
20 public deposits in savings and loans. If the funds
21 are inadequate to cover the entire loss, then the
22 treasurer shall make an assessment against other
23 savings and loans that hold public funds. The
24 assessment shall be determined by multiplying the
25 total amount of the remaining loss to public
26 depositors by a percentage that represents the average
27 of public funds deposits held by all savings and loans
28 during the preceding twelve-month period ending on the
29 last day of the month immediately preceding the month
30 the savings and loan was closed. Each savings and
31 loan shall pay its assessment to the treasurer within
32 three business days after it receives notice of
33 assessment. If a savings and loan fails to pay its
34 assessment when due, the treasurer of state shall
35 initiate a lawsuit to collect the assessment. If a
36 savings and loan is found to have failed to pay the
37 assessment as required by this paragraph, the court
38 shall order it to pay the assessment, court costs,
39 reasonable attorney fees based upon the amount of time
40 the attorney general's office spent preparing and
41 bringing the action, and reasonable expenses incurred
42 by the treasurer of state's office. Idle balances in
43 the fund are to be invested by the treasurer with
44 earnings credited to the fund. Fees paid by savings
45 and loans for administration of this chapter will be
46 credited to the fund and the treasurer may deduct
47 actual costs of administration from the fund.

48 e. Any amount realized from the sale of collateral
49 pursuant to paragraph "d", in excess of the amount of
50 a savings and loan's or credit union's assessment,

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1 shall continue to be held by the treasurer, in the
2 same interest bearing investments available for public
3 funds, as collateral, until that savings and loan or
4 credit union provides substitute collateral or is
5 otherwise entitled to its release."

6 8. Page 9, by inserting after line 26 the
7 following:

8 "Sec. ____ . Section 12C.25, Code 2001, is amended
9 by adding the following new subsection:

10 NEW SUBSECTION. 3. A state sinking fund for
11 public deposits in savings and loans."

12 9. By renumbering, redesignating, and correcting
13 internal references as necessary.

By HANSEN of Pottawattamie
JOHNSON of Osceola

H-1336 FILED MARCH 26, 2001

w/d
3/28/01
(p. 95)

HOUSE FILE 681

H-1347

1 Amend House File 681 as follows:

2 1. Page 12, by striking lines 18 through 30 and
3 inserting the following:

4 "Sec. ____ . REPORTS BY THE BANKING DIVISION AND THE
5 CREDIT UNION DIVISION. The superintendent of banking
6 and the superintendent of credit unions shall each
7 prepare a report for the general assembly as follows:

8 1. The superintendent of banking shall prepare a
9 report for the general assembly that includes an
10 analysis of the current state sinking fund for public
11 deposits in banks; a comparison of the current
12 statutory assessment process for public funds
13 deposits, a system of pledging of collateral, and
14 other risk-based or nonrisk-based alternatives; and
15 such other information or issues as the superintendent
16 deems appropriate and useful to the general assembly
17 in the general assembly's review of the issues and
18 policy alternatives associated with this matter.

19 2. The superintendent of credit unions shall
20 prepare a report for the general assembly that
21 includes an analysis of the current state sinking fund
22 for public deposits in credit unions; a comparison of
23 the current statutory assessment process for public
24 funds deposits, a system of pledging of collateral,
25 including the current statute permitting credit unions
26 to pledge collateral, and other risk-based or nonrisk-
27 based alternatives; and such other information or
28 issues as the superintendent deems appropriate and
29 useful to the general assembly in the general
30 assembly's review of the issues and policy
31 alternatives associated with this matter.

32 3. Each report may include recommendations for
33 changes in applicable existing statutes. Each report
34 shall be submitted to the general assembly no later
35 than November 1, 2001."

By JOHNSON of Osceola
VAN FOSSEN of Scott

H-1347 FILED MARCH 27, 2001

adopted
3/28/01
(p. 952)

m: rll
S- 2/5/02 Amend/Do Pass w/s-5015

3/14/02 UNFINISHED BUSINESS CALENDAR

HOUSE FILE 681
BY COMMITTEE ON COMMERCE AND
REGULATION

(SUCCESSOR TO HSB 223)

(As Amended and Passed by the House March 28, 2001)

Passed House, Date ^(P. 952) 3-28-01 Passed Senate, Date ^(P. 437) 2/27/02
Vote: Ayes 97 Nays 0 Vote: Ayes 48 Nays 0
Approved April 9, 2002
Re - Passed 3/25/02
vote 93-0

A BILL FOR

1 An Act requiring the pledging of collateral in relation to the
2 deposit of uninsured public funds, making related changes,
3 making penalties applicable, and providing for applicability.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

House Amendments _____

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1 Section 1. Section 12C.1, subsection 2, Code 2001, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. g. "Public officer" means the person
4 authorized by and acting for a public body to deposit public
5 funds of the public body.

6 NEW PARAGRAPH. h. "Uninsured public funds" means any
7 amount of public funds of a public funds depositor on deposit
8 in an account at a financial institution that exceeds the
9 amount of public funds in that account that are insured by the
10 federal deposit insurance corporation or the national credit
11 union administration.

12 Sec. 2. Section 12C.2, Code 2001, is amended to read as
13 follows:

14 12C.2 APPROVAL -- REQUIREMENTS.

15 The approval of a financial institution as a depository of
16 public funds for a public body shall be by written resolution
17 or order which that shall be entered of record in the minutes
18 of the approving board, and which that shall distinctly name
19 each depository approved, and specify the maximum amount which
20 that may be kept on deposit in each depository.

21 Sec. 3. Section 12C.6A, subsection 3, paragraph b, Code
22 2001, is amended to read as follows:

23 b. To receive challenges from any person to a financial
24 institution's continued eligibility to receive **state** public
25 funds.

26 Sec. 4. Section 12C.19, subsection 1, Code 2001, is
27 amended to read as follows:

28 1. Securities pledged pursuant to this chapter may be
29 withdrawn on application of the pledging depository
30 institution, and as to securities pledged by a credit union,
31 upon approval of the public officer to whom the securities are
32 pledged, if the deposit of securities is no longer necessary
33 to comply with this chapter, or is required for collection by
34 virtue of its maturity or for exchange. The depository
35 institution shall replace securities so withdrawn for

1 collection or exchange.

2 Sec. 5. NEW SECTION. 12C.20 PUBLIC FUND REPORTS.

3 1. On or before the tenth day of November, February, May,
4 and August of each year, each bank shall calculate and certify
5 to the superintendent of banking in the form prescribed by the
6 superintendent the minimum amount of its uninsured public
7 funds that must at all times during the next calendar quarter
8 be secured by collateral pledged to the treasurer of state
9 under section 12C.22.

10 2. The superintendent may at any time make such
11 investigation as the superintendent deems necessary and
12 appropriate to verify the information provided to the
13 superintendent pursuant to subsection 1.

14 3. On or before the twentieth day of December, March,
15 June, and September of each year, the superintendent shall
16 notify the treasurer of state of the minimum amount of
17 collateral that must at all times be pledged by each bank to
18 the treasurer of state during the next calendar quarter.

19 Sec. 6. NEW SECTION. 12C.22 REQUIRED COLLATERAL --
20 BANKS.

21 1. A financial institution that is a bank shall pledge to
22 the treasurer of state the amount of collateral required under
23 subsection 2 by depositing the collateral before the first day
24 of each calendar quarter in restricted accounts at a financial
25 institution that has been designated by the treasurer of state
26 and that is not owned or controlled directly or indirectly by
27 the same depository or holding company. Each bank shall
28 execute as debtor and deliver to the treasurer of state a
29 security agreement and such other documents, instruments, and
30 agreements in form approved by the treasurer of state as are
31 required to grant to the treasurer of state, as secured party
32 in its capacity as agent for the depositors of all public
33 funds from time to time deposited in the bank, a perfected
34 security interest in the collateral described in the security
35 agreement. The security agreement shall among other

1 provisions contain all of the following provisions:

2 a. A security interest in the collateral is granted as
3 collateral for the obligation of the bank to repay all
4 uninsured public funds deposited in the bank.

5 b. The security interest in the collateral is also granted
6 as collateral security for the obligation of the bank to repay
7 the uninsured public funds deposited in a closed bank to the
8 extent required under section 12C.23A, subsection 3.

9 c. In the event that the collateral is liquidated and to
10 the extent that the proceeds are used to pay the claim of a
11 public funds depositor in the receivership of a closed bank,
12 the bank whose collateral is liquidated is subrogated to the
13 claim of the public funds depositor.

14 d. The treasurer of state is appointed as agent to assert
15 the claim on behalf of the bank as subrogee. Any amount
16 recovered by the treasurer by reason of the claim shall be
17 deposited in the state sinking fund for public deposits in
18 banks.

19 2. The amount of the required collateral shall not be less
20 than the total of the amount of uninsured public funds
21 deposits in the bank at the end of each of the preceding four
22 calendar quarters divided by four, times twenty-five percent,
23 effective on and after July 1, 2002.

24 3. The amount of collateral pledged by a bank shall be
25 increased as required in order that the amount of collateral
26 pledged by the bank is at all times not less than the
27 applicable percent of uninsured public funds set forth in
28 subsection 2. The value of the collateral shall be its market
29 value.

30 4. The treasurer of state shall adopt rules pursuant to
31 chapter 17A to administer this section, including rules to do
32 the following:

33 a. Establish requirements for reporting by the
34 superintendent to the treasurer of state as to the minimum
35 collateral requirements for each bank.

1 b. Designate not less than four financial institutions
2 that may be custodians of collateral pledged under this
3 chapter.

4 c. Establish requirements for reporting to the treasurer
5 of state by a financial institution of the amount and value of
6 collateral held by the financial institution as custodian of
7 collateral for the uninsured public funds on deposit in a
8 bank.

9 d. Establish procedures for the valuation of collateral
10 that does not have a readily ascertainable market value.

11 e. Establish procedures for substituting different
12 collateral for collateral pledged under this section.

13 f. Establish administrative procedures necessary to
14 administer this chapter and other rules as may be necessary to
15 accomplish the purposes of this chapter.

16 g. Establish amounts and procedures for payment of fees to
17 cover the costs of administration of this chapter.

18 5. The collateral used to secure public deposits shall be
19 in one or more of the following forms acceptable to the
20 treasurer of state:

21 a. Direct obligations of, or obligations that are insured
22 or fully guaranteed as to principal and interest by, the
23 United States of America or an agency or instrumentality of
24 the United States of America, including obligations of
25 government-sponsored enterprises.

26 b. Public bonds or obligations of this state or a
27 political subdivision of this state, including obligations the
28 payment of which is dependent upon revenue from the specific
29 project or fund.

30 c. Public bonds or obligations of another state or a
31 political subdivision of another state whose bonds are rated
32 within the two highest classifications of prime as established
33 by at least one of the standard rating services approved by
34 the superintendent of banking by rule adopted pursuant to
35 chapter 17A.

1 d. Guarantees, loans, obligations, or nontransferable
2 letters of credit upon which the payment of principal and
3 interest is fully secured or guaranteed by the United States
4 of America or an agency or instrumentality including
5 government-sponsored enterprises of the United States of
6 America.

7 e. Letters of credit issued by a federal reserve bank or a
8 federal home loan bank.

9 f. Corporate bonds rated within the two highest
10 classifications of prime as established by at least one of the
11 standard rating services approved by the superintendent by
12 rule adopted pursuant to chapter 17A.

13 g. A bond of a surety company rated within the two highest
14 classifications established by at least one of the standard
15 rating services and approved by the superintendent by rule
16 adopted pursuant to chapter 17A.

17 h. Investments in an open-end management investment
18 company registered with the federal securities and exchange
19 commission under the federal Investment Company Act of 1940,
20 15 U.S.C. § 80(a), which is operated in accordance with 17
21 C.F.R. § 270.2a-7. Direct obligations of, or obligations that
22 are insured or fully guaranteed as to principal and interest
23 by the United States of America, which may be used to secure
24 public deposits under paragraph "a", include investments in an
25 investment company or investment trust registered under the
26 federal Investment Company Act of 1940, 15 U.S.C. § 80(a), the
27 portfolio of which is limited to the United States government
28 obligations described in paragraph "a", if the investment
29 company or investment trust takes delivery of the collateral
30 either directly or through an authorized custodian.

31 6. A bank may borrow collateral used for a pledge if the
32 collateral is free of any liens, security interests, claims,
33 or encumbrances.

34 Sec. 7. Section 12C.23A, Code 2001, is amended to read as
35 follows:

1 12C.23A PAYMENT OF LOSSES IN A BANK.

2 1. The acceptance of public funds and the pledging of
3 securities by a bank pursuant to this chapter constitutes
4 consent all of the following:

5 a. Consent by the bank to the disposition of securities in
6 accordance with this section.

7 b. Consent by the bank to assessments by the treasurer of
8 state in accordance with this chapter.

9 c. Agreement by the bank to provide accurate information
10 and to otherwise comply with the requirements of this chapter.

11 2. ~~The~~ A bank is liable for payment if the bank fails to
12 pay a check, draft, or warrant drawn by ~~the public officer~~ a
13 public funds depositor or to account for a check, draft,
14 warrant, order, or certificates of deposit, or any public
15 funds entrusted to ~~it~~ the bank if, in failing to pay, the bank
16 acts contrary to the terms of an agreement between the bank
17 and the public ~~body-treasurer~~ funds depositor. The bank is
18 also liable to the treasurer of state for payment if the bank
19 fails to pay an assessment by the treasurer of state when the
20 assessment is due.

21 3. If a bank is closed by its primary regulatory
22 officials, ~~the public body~~ each public funds depositor with
23 deposits in the bank shall notify the treasurer of state of
24 the amount of any claim within thirty days of the closing.
25 The treasurer of state shall implement the following
26 procedures:

27 a. In cooperation with the responsible regulatory
28 officials for the closed bank, the treasurer shall validate
29 the amount of public funds on deposit at the defaulting closed
30 bank and the amount of deposit insurance applicable to the
31 deposits.

32 b. ~~The recovery of any~~ Any loss to ~~public~~ the public funds
33 depositors shall begin with applicable be satisfied first by
34 any federal deposit insurance, then by the sale or other
35 disposition of collateral pledged by the closed bank, then

1 from the assets of the closed bank. ~~The~~ To the extent
2 permitted by federal law, the priority of claims are those
3 established pursuant to section 524.1312, subsection 2. To
4 the extent permitted by federal law, in the distribution of an
5 insolvent federally chartered bank's assets, the order of
6 payment of liabilities, if its assets are insufficient to pay
7 in full all its liabilities for which claims are made, shall
8 be in the same order as for a ~~state-chartered~~ state bank as
9 provided in section 524.1312, subsection 2.

10 c. The claim of a public funds depositor for purposes of
11 this section shall be the amount of the depositor's public
12 funds deposits plus interest to the date the funds are
13 distributed to the public funds depositor at the rate the bank
14 agreed to pay on the public funds reduced by the portion of
15 the public funds ~~which that~~ is insured by federal deposit
16 insurance.

17 d. If the loss ~~to~~ of public funds is not covered by
18 federal deposit insurance and the proceeds of the ~~failed~~
19 closed bank's assets ~~which that~~ are liquidated within thirty
20 days of the closing of the bank are not sufficient to cover
21 the loss, then any further payments to cover the loss will
22 come from the state sinking fund for public deposits in banks.
23 If the balance in that sinking fund is inadequate to pay the
24 entire loss, then the treasurer shall obtain the additional
25 amount needed by making an assessment against other banks
26 whose public funds deposits exceed federal deposit insurance
27 coverage. A bank's assessment shall be determined by
28 multiplying the total amount of the remaining loss to all
29 public depositors in the closed bank by a percentage that
30 represents ~~that~~ the assessed bank's proportional share of the
31 total of uninsured public funds deposits held by all banks,
32 calculated in the manner provided by section 12C.22,
33 subsection 2, excluding the amount of uninsured public funds
34 held by the closed bank at the time of closing. Each bank
35 shall pay its assessment to the treasurer of state within

1 three business days after it receives notice of assessment.

2 e. If a bank fails to pay its assessment when due, the
3 treasurer of state shall ~~initiate a lawsuit to collect~~ satisfy
4 the assessment by liquidating collateral pledged by the bank
5 upon such notice as is required by chapter 554. If the
6 collateral pledged by the bank is inadequate to pay the
7 assessment, the treasurer of state shall make additional
8 assessments as may be necessary against other banks that hold
9 uninsured public funds to satisfy any unpaid assessment. Any
10 additional assessments shall be determined, collected, and
11 satisfied in the same manner as the first assessment except
12 that in calculating that amount of each such additional
13 assessment, the amount of uninsured public funds held by the
14 bank that fails to pay the assessment shall not be counted.

15 f. If a bank fails to pay its assessment when due and the
16 proceeds from liquidation of the collateral pledged by the
17 bank are not sufficient to pay the assessment against the
18 bank, the treasurer of state shall notify the superintendent
19 or the comptroller of the currency, as applicable, of the
20 failure to pay the assessment and shall initiate a lawsuit to
21 collect the amount of the assessment. If a bank is found to
22 have failed to pay the assessment as required by this
23 paragraph, subsection and is ordered to pay the assessment,
24 the court shall also order it to that the bank pay the
25 assessment, court costs, and reasonable attorney fees based on
26 the amount of time the attorney general's office spent
27 preparing and bringing the action, and reasonable expenses
28 incurred by the treasurer of state. ~~Idle balances in the fund~~
29 ~~shall be invested by the treasurer with earnings credited to~~
30 ~~the fund. Fees paid by banks for administration of this~~
31 ~~chapter shall be credited to the fund and the treasurer may~~
32 ~~deduct actual costs of administration from the fund.~~

33 e. g. Following collection of the assessments, the state
34 treasurer of state shall distribute funds to the public
35 depositors of the ~~failed~~ closed bank according to their

1 validated claims. ~~if-the-assets-available-are-less-than-the~~
2 ~~total-deposits, the-treasurer-shall-prorate-the-claims.--A~~
3 ~~public-depositor~~ By receiving payment under this section, a
4 public depositor shall assign be deemed to have assigned to
5 the treasurer any interest rights the public depositor may
6 have in funds that subsequently become available to depositors
7 of the defaulting closed bank.

8 Sec. 8. Section 12C.24, Code 2001, is amended to read as
9 follows:

10 12C.24 LIABILITY.

11 When public deposits are made in accordance with this
12 chapter, a public body depositing public funds or its agents,
13 employees, officers, and board members are exempt from
14 liability for any loss resulting from the loss of a depository
15 in the absence of negligence, malfeasance, misfeasance, or
16 nonfeasance on the part of the official. If the treasurer of
17 state ~~sells-a-depository's~~ liquidates collateral securities
18 pledged by a bank, the depository bank shall within ten days
19 following receipt of notice from the treasurer of state
20 deposit additional collateral to meet required collateral
21 levels.

22 In making an assessment against depositories banks holding
23 public funds as a result of a failure bank closure, the
24 treasurer of state is exempt from any liability for loss,
25 damage, or expense to a depository-which bank that has
26 accepted public funds.

27 Sec. 9. Section 12C.25, Code 2001, is amended by adding
28 the following new unnumbered paragraph after subsection 2:

29 NEW UNNUMBERED PARAGRAPH. Idle balances in the state
30 sinking fund for public deposits in banks shall be invested by
31 the treasurer of state with earnings credited to that fund.
32 Fees paid by banks for administration of this chapter shall be
33 credited to the state sinking fund for public deposits in
34 banks and the treasurer of state may deduct actual costs of
35 administration from that fund.

1 Sec. 10. NEW SECTION. 12C.27 FAILURE TO MAINTAIN
2 REQUIRED COLLATERAL.

3 If a bank fails to maintain the amount of collateral
4 subject to a perfected security interest held by the treasurer
5 of state required to comply with section 12C.22, subsections 2
6 and 3, the treasurer of state shall notify the bank of the
7 amount of additional collateral required. If the bank fails
8 to provide the additional required collateral within ten days
9 following the date the notice is given, the treasurer shall
10 notify the office of thrift supervision, the office of the
11 comptroller of the currency, or the superintendent as
12 applicable, who may take such action against the bank, its
13 board of directors and officers as permitted by law.

14 Sec. 11. NEW SECTION. 12C.28 ELECTRONIC REPORTING.

15 Any notice, information, report, or other communication
16 required by this chapter shall be deemed effective and in
17 compliance with this chapter if sent or given electronically
18 as provided in rules adopted pursuant to chapter 17A by the
19 superintendent or the treasurer of state.

20 Sec. 12. Section 524.213, Code 2001, is amended to read as
21 follows:

22 524.213 DUTIES AND POWERS OF SUPERINTENDENT.

23 The superintendent shall have general control, supervision
24 and regulation of all state banks and shall be charged with
25 the administration and execution of the laws of this state
26 relating to banks and banking and with such other duties and
27 responsibilities as are imposed upon the superintendent by the
28 laws of this state. The superintendent shall have power to
29 adopt and promulgate such rules and regulations as in the
30 superintendent's opinion will be necessary to properly and
31 effectively carry out and enforce the provisions of this
32 chapter and chapter 12C.

33 Sec. 13. Section 524.223, Code 2001, is amended to read as
34 follows:

35 524.223 POWER OF SUPERINTENDENT TO ISSUE ORDERS.

1 1. Whenever it shall appear to the superintendent that a
2 state bank is engaging or has engaged, or the superintendent
3 has reasonable cause to believe that the state bank is about
4 to engage, in an unsafe or unsound practice in conducting the
5 business of such state bank, or is violating or has violated,
6 or the superintendent has reasonable cause to believe that the
7 state bank is about to violate, any provision of this chapter
8 or of any regulation adopted pursuant to this chapter, or any
9 condition imposed in writing by the superintendent in
10 connection with the approval of any matter required by this
11 chapter, or any written agreement entered into with the
12 superintendent, or any provision of chapter 12C or any rules
13 adopted pursuant to chapter 12C, the superintendent may issue
14 and serve upon the state bank a notice containing a statement
15 of the facts constituting the alleged violation or violations,
16 or the unsafe or unsound practice or practices, and fixing a
17 time and place at which a hearing will be held to determine
18 whether an order to cease and desist ~~therefrom~~ should be
19 issued to the state bank.

20 2. If the state bank fails to appear at the hearing it
21 shall be deemed to have consented to the issuance of a cease
22 and desist order. In the event of such consent, or if upon
23 the record made at such hearing, the superintendent shall find
24 that any violation or unsafe or unsound practice specified in
25 the notice has been established, the superintendent may issue
26 and serve upon the bank an order to cease and desist from any
27 such violation or practice. Such order may require the state
28 bank and its directors, officers and employees to cease and
29 desist from any such violation or practice and, further, to
30 take affirmative action to correct the conditions resulting
31 from any such violation or practice. In addition, if the
32 violation or practice involves a failure to comply with
33 chapter 12C or any rules adopted pursuant to chapter 12C, the
34 superintendent may require that during the current calendar
35 quarter and the next succeeding eight calendar quarters that

1 the bank do one of the following:

2 a. Return to the depositors some or all uninsured public
3 funds.

4 b. Pledge up to an amount equal to one hundred ten percent
5 of the uninsured public funds held by the bank, calculated in
6 the same manner as provided by section 12C.20, subsection 1.

7 3. Any order issued pursuant to this section shall become
8 effective upon service thereof of the order on the state bank
9 and shall remain effective except to such extent that it is
10 stayed, modified, terminated, or set aside by action of the
11 superintendent or of the district court of the county in which
12 the state bank has its principal place of business.

13 4. The superintendent may apply to the district court of
14 the county in which the state bank has its principal place of
15 business for the enforcement of any order pursuant to this
16 section and such court shall have jurisdiction and power to
17 order and require compliance therewith.

18 Sec. 14. REPORTS BY THE BANKING DIVISION AND THE CREDIT
19 UNION DIVISION. The superintendent of banking and the
20 superintendent of credit unions shall each prepare a report
21 for the general assembly as follows:

22 1. The superintendent of banking shall prepare a report
23 for the general assembly that includes an analysis of the
24 current state sinking fund for public deposits in banks; a
25 comparison of the current statutory assessment process for
26 public funds deposits, a system of pledging of collateral, and
27 other risk-based or nonrisk-based alternatives; and such other
28 information or issues as the superintendent deems appropriate
29 and useful to the general assembly in the general assembly's
30 review of the issues and policy alternatives associated with
31 this matter.

32 2. The superintendent of credit unions shall prepare a
33 report for the general assembly that includes an analysis of
34 the current state sinking fund for public deposits in credit
35 unions; a comparison of the current statutory assessment

1 process for public funds deposits, a system of pledging of
2 collateral, including the current statute permitting credit
3 unions to pledge collateral, and other risk-based or nonrisk-
4 based alternatives; and such other information or issues as
5 the superintendent deems appropriate and useful to the general
6 assembly in the general assembly's review of the issues and
7 policy alternatives associated with this matter.

8 3. Each report may include recommendations for changes in
9 applicable existing statutes. Each report shall be submitted
10 to the general assembly no later than November 1, 2001.

11 Sec. 15. EFFECTIVE DATE AND APPLICABILITY. This Act takes
12 effect on July 1, 2001, with the following exceptions:

13 1. Certification to the superintendent under section
14 12C.20, subsection 1, shall not be required until February 10,
15 2002.

16 2. Notification by the superintendent to the treasurer of
17 state under section 12C.20, subsection 3, shall not be
18 required until June 20, 2002.

19 3. The pledging of collateral to the treasurer of state
20 pursuant to section 12C.22 shall not be required until July 1,
21 2002.

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HOUSE FILE 681

S-5015

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 12C.1, subsection 2, paragraph
6 c, Code Supplement 2001, is amended to read as
7 follows:

8 c. "Bank" means a corporation engaged in the
9 business of banking authorized by law to receive
10 deposits and whose deposits are insured by the bank
11 insurance fund or the savings association insurance
12 fund of the federal deposit insurance corporation and
13 includes any office of a bank. "Bank" also means a
14 savings and loan or savings association."

15 2. Page 1, line 1, by inserting after the word
16 "Code" the following: "Supplement".

17 3. Page 1, by inserting after line 20 the
18 following:

19 "Sec. ____ . Section 12C.6A, subsection 2, Code
20 2001, is amended to read as follows:

21 2. In addition to establishing a minimum interest
22 rate for public funds pursuant to section 12C.6, the
23 committee composed of the superintendent of banking,
24 the superintendent of credit unions, the auditor of
25 state or a designee, and the treasurer of state shall
26 develop a list of financial institutions eligible to
27 accept state public funds. The committee shall
28 require that a financial institution seeking to
29 qualify for the list shall annually provide the
30 committee a written statement that the financial
31 institution has complied with the requirements of this
32 chapter and has a commitment to community reinvestment
33 consistent with the safe and sound operation of a
34 financial institution, unless the financial
35 institution has received a rating of satisfactory or
36 higher pursuant to the federal Community Reinvestment
37 Act, 12 U.S.C. § 2901 et seq., and such rating is
38 certified to the committee by the superintendent of
39 banking. To qualify for the list a financial
40 institution must demonstrate a continuing commitment
41 to meet the credit needs of the local community in
42 which it is chartered."

43 4. Page 2, by striking lines 2 through 18 and
44 inserting the following:

45 "Sec. ____ . NEW SECTION. 12C.20 PUBLIC FUND
46 REPORTS.

47 1. On or before the tenth day of February, May,
48 August, and November of each year, each savings and
49 loan and each out-of-state bank that has one or more
50 branches in the state shall calculate and certify to

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1 the superintendent of banking in the form prescribed
2 by the superintendent the amount of public funds on
3 deposit at the savings and loan and at each such
4 branch of the out-of-state bank as of the end of the
5 previous calendar quarter.

6 2. A bank shall, upon request of the
7 superintendent, certify to the superintendent the
8 amount of public funds on deposit at the bank and at
9 each branch of an out-of-state bank on any day
10 specified by the superintendent in such request.

11 3. The superintendent may at any time make such
12 investigation as the superintendent deems necessary
13 and appropriate to verify the information provided to
14 the superintendent pursuant to subsections 1 and 2.

15 4. On or before the twentieth day of February,
16 May, August, and November of each year, the
17 superintendent shall notify the treasurer of state of
18 the amount of collateral required to be pledged as of
19 the end of the previous calendar quarter based upon
20 the certification provided to the superintendent under
21 subsection 1 or 2 and a review by the superintendent
22 of the quarterly call report filed by each bank that
23 is not a savings and loan or an out-of-state bank."

24 5. Page 2, line 21, by striking the words
25 "financial institution that is a".

26 6. Page 2, lines 23 and 24, by striking the words
27 "before the first day of each calendar quarter".

28 7. Page 2, line 27, by striking the words "same
29 depository or holding company" and inserting the
30 following: "bank pledging the collateral or any
31 affiliate of the bank as defined in section 524.1101".

32 8. Page 3, line 7, by inserting after the word
33 "bank" the following: "by paying an assessment to the
34 treasurer of state".

35 9. Page 3, by striking lines 9 through 13 and
36 inserting the following:

37 "c. In the event an assessment is paid by a bank
38 to the treasurer of state pursuant to section 12C.23A,
39 or in the event that collateral pledged by the bank is
40 liquidated pursuant to section 12C.23A, subsection 3,
41 paragraph "e", and the proceeds are used to pay the
42 assessment, the bank is subrogated to the claim of a
43 public funds depositor to the extent the claim is paid
44 from funds paid by the bank or proceeds of collateral
45 pledged by the bank are used to pay the assessment."

46 10. Page 3, line 14, by inserting after the word
47 "agent" the following: "of the bank".

48 11. By striking page 3, line 19, through page 5,
49 line 33, and inserting the following:

50 "2. The amount of the collateral required to be

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1 pledged by a bank shall at all times equal or exceed
2 the total of the amount by which the public funds
3 deposits in the bank exceeds the total capital of the
4 bank. For purposes of this chapter, unless the
5 context otherwise requires, "total capital of the
6 bank" means its tier one capital plus both of the
7 following components of tier two capital:
8 a. Qualifying subordinated debt and redeemable
9 preferred stock.
10 b. Cumulative perpetual preferred stock.
11 3. The amount of collateral pledged by an out-of-
12 state bank that operates a branch in Iowa shall be
13 calculated in accordance with the following formula:
14 a. Total deposits of the bank.
15 b. Total deposits in Iowa branches of the bank.
16 c. The total of paragraph "b" divided by the total
17 of paragraph "a", in order to establish the deposits
18 of Iowa branches as a percentage of total deposits.
19 d. Total capital of the bank as defined in
20 subsection 2.
21 e. The total of paragraph "d" multiplied by the
22 total of paragraph "c", in order to establish Iowa
23 branch capital.
24 f. Total public funds deposits in the bank.
25 g. The excess of the total of paragraph "f" over
26 the total of paragraph "e", if any.
27 4. The value of the collateral shall be its market.
28 value.
29 5. The treasurer of state shall adopt rules
30 pursuant to chapter 17A to administer this section,
31 including rules to do the following:
32 a. Designate not less than four financial
33 institutions that may be custodians of collateral
34 pledged under this chapter and establish regulations
35 for qualification and compliance by the custodians and
36 remedies and sanctions for noncompliance by the
37 custodians.
38 b. Establish requirements for reporting to the
39 treasurer of state by a financial institution of the
40 amount and value of collateral held by the financial
41 institution as custodian of collateral for the
42 uninsured public funds on deposit in a bank.
43 c. Establish procedures for the valuation of
44 collateral that does not have a readily ascertainable
45 market value.
46 d. Establish procedures for substituting different
47 collateral for collateral pledged under this section.
48 e. Establish procedures to determine the amount of
49 the uninsured public funds of each bank or branch of
50 an out-of-state bank as of the date of closing of a

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1 closed bank and the amount of the assessment to be
2 made upon each bank.

3 f. Establish additional procedures necessary to
4 administer this chapter and other rules as may be
5 necessary to accomplish the purposes of this chapter.

6 g. Provide forms and procedures for compliance
7 with this chapter, including electronic compliance.

8 h. Establish amounts and procedures for payment of
9 fees to cover the costs of administration of this
10 chapter.

11 6. The collateral used to secure public deposits
12 shall be in one or more of the following forms
13 acceptable to the treasurer of state:

14 a. Investment securities and shares in which a
15 bank is permitted to invest under section 524.901,
16 subsections 1, 2, and 3.

17 b. Investment securities, as defined in section
18 524.901, subsection 1, paragraph "a", representing
19 general obligations of a state or a political
20 subdivision of a state that is geographically
21 contiguous with the state, provided that such
22 investment securities are rated within the four
23 highest grades according to a reputable rating service
24 or represent unrated issues of equivalent value.

25 c. Investment securities, as defined in section
26 524.901, subsection 1, paragraph "a", representing
27 general obligations of a state or a political
28 subdivision of a state that is not contiguous with the
29 state, provided that such investment securities are
30 rated within the two highest grades according to a
31 reputable rating service.

32 d. Nontransferable letters of credit upon which
33 the payment of principal and interest is fully secured
34 or guaranteed by the United States of America or an
35 agency or instrumentality, including government-
36 sponsored enterprises of the United States of America.

37 e. Private insurance policies or bonds written by
38 companies approved by the superintendent.

39 7. A bank may borrow collateral to be pledged
40 under subsection 2 if the collateral is free of any
41 liens, security interests, claims, or encumbrances."

42 12. Page 6, lines 2 and 3, by striking the words
43 "and the pledging of securities".

44 13. By inserting after page 6, line 4, the
45 following:

46 " . Agreement by the bank to pledge collateral
47 as required by section 12C.22."

48 14. Page 6, line 5, by striking the word
49 "securities" and inserting the following: "the
50 collateral".

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- 1 15. Page 6, line 14, by striking the word
2 "certificates" and inserting the following:
3 "~~certificates~~ certificate".
- 4 16. Page 6, line 19, by inserting after the word
5 "state" the following: "under subsection 3".
- 6 17. Page 6, lines 21 and 22, by striking the
7 words "regulatory officials" and inserting the
8 following: "regulatory officials state or federal
9 regulator".
- 10 18. Page 6, line 32, by striking the word "the"
11 and inserting the following: "a".
- 12 19. Page 6, line 33, by striking the word
13 "depositors" and inserting the following: "depositors
14 depositor".
- 15 20. Page 7, by striking lines 31 through 34, and
16 inserting the following: "total of uninsured public
17 funds deposits held by all banks and all branches of
18 out-of-state banks, based upon the average of the
19 uninsured public funds of the assessed bank or branch
20 of an out-of-state bank as of the end of the four
21 calendar quarters prior to the date of closing of the
22 closed bank and the average of the uninsured public
23 funds in all banks and branches of out-of-state banks
24 as of the end of the four calendar quarters prior to
25 the date of closing of the closed bank, excluding the
26 amount of uninsured public funds held by the closed
27 bank at the end of the four calendar quarters held by
28 the closed bank. Each bank".
- 29 21. Page 8, line 12, by striking the words "that
30 amount" and inserting the following: "the amount".
- 31 22. Page 8, by inserting after line 14 the
32 following:
33 "f. If the treasurer of state liquidates
34 collateral pledged by a bank, the bank shall within
35 three business days following receipt of notice from
36 the treasurer of state deposit additional collateral
37 to provide the collateral required under section
38 12C.22."
- 39 23. Page 8, line 15, by striking the letter "f."
40 and inserting the following: "g."
- 41 24. Page 8, by striking lines 20 and 21 and
42 inserting the following: "failure to pay the
43 assessment. If the bank that has failed to pay the
44 assessment is a nationally chartered financial
45 institution, the superintendent shall immediately
46 notify the bank's primary federal regulator. If the
47 assessment is not paid within thirty days after the
48 bank received the notice of assessment, the treasurer
49 of state shall initiate a lawsuit to collect the
50 amount of the assessment. If a bank is found to".

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1 25. By striking page 8, line 33, through page 9,
2 line 7, and inserting the following:
3 "~~e~~ h. Following collection of the assessments,
4 the ~~state~~ state treasurer of state shall distribute funds to
5 the public depositors of the ~~failed~~ closed bank
6 according to their validated claims unless a public
7 depositor requests in writing that the claims of other
8 public depositors be paid prior to payment to the
9 public depositor making the request. If the assets
10 available are less than the total deposits, the
11 treasurer shall prorate the claims. A public
12 depositor By receiving payment under this section, a
13 public depositor shall assign be deemed to have
14 assigned to the treasurer of state any interest claim
15 the public depositor may have against the closed bank
16 by reason of the deposit of its public funds and all
17 rights the public depositor may have in funds that
18 subsequently become available to depositors of the
19 defaulting closed bank."

20 26. Page 9, by striking lines 12 through 26, and
21 inserting the following: "chapter in a financial
22 institution that is eligible to accept public funds
23 deposits at the time a deposit of public funds is
24 made, a public body depositing public funds or its
25 agents, employees, officers, and board members are,
26 and any person that is an agent, employee, officer, or
27 board member of the public funds depositor, is exempt
28 from liability for any loss resulting from the loss of
29 a depository public funds in the absence of
30 negligence, malfeasance, misfeasance, or nonfeasance
31 on the part of the official public body or such
32 person. If the treasurer of state sells a
33 depository's collateral securities, the depository
34 shall deposit additional collateral to meet required
35 collateral levels."

36 ~~In making an assessment against depositories~~
37 ~~holding public funds as a result of a failure, the~~
38 ~~treasurer of state is exempt from any liability for~~
39 ~~loss, damage or expense to a depository which has~~
40 ~~accepted public funds."~~

41 27. Page 9, by adding after line 35 the
42 following:

43 "Sec. ____ . Section 12C.26, Code 2001, is amended
44 by striking the section and inserting in lieu thereof
45 the following:

46 12C.26 REFUND FROM SINKING FUNDS.

47 1. If at the end of any calendar year the amount
48 in the sinking fund exceeds three million one hundred
49 thousand dollars, then to the extent the amount in the
50 sinking fund exceeds three million dollars, the

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1 treasurer shall, on or before January 31 of the
2 following year, refund to each bank that paid an
3 assessment after the year 1999 to the sinking fund
4 resulting from the closing of a bank, its pro rata
5 share of the unreimbursed portion of the total
6 assessment paid by all banks. If assessments remain
7 unreimbursed by reason of the closing of more than one
8 bank, the reimbursements shall be made to the banks
9 that paid assessments by reason of the bank which
10 closed first until those banks are reimbursed in full,
11 and then to the banks that paid assessments by reason
12 of the bank which closed next. Such a refund shall
13 not be made to a bank if the refund would exceed the
14 amount of previous assessments paid by the bank.

15 2. Upon recovery of a loss of public funds due to
16 a closed credit union, the treasurer of state may
17 refund all or a portion of the recovered amount to the
18 credit unions that paid an assessment under this
19 chapter as a result of the closing of that credit
20 union."

21 28. Page 10, by striking lines 29 through 32 and
22 inserting the following: "adopt and promulgate such
23 rules and regulations as ~~in the superintendent's~~
24 ~~opinion will be necessary to properly and effectively~~
25 carry out and enforce, properly and effectively, the
26 provisions of this chapter and chapter 12C applicable
27 to banks."

28 29. Page 11, line 34, by inserting after the word
29 "may" the following: "recommend to the committee
30 established under section 12C.6 that the bank be
31 removed from the list of financial institutions
32 eligible to accept public funds under section 12C.6A
33 and may".

34 30. Page 11, line 35, by inserting after the
35 words "quarter and" the following: "up to".

36 31. Page 12, by striking lines 1 through 6, and
37 inserting the following: "the bank do any one or more
38 of the following:

39 a. Not accept public funds deposits.

40 b. Return to the depositors some or all uninsured
41 public funds held in demand deposits and, when deposit
42 instruments or agreements mature, return to the
43 depositors some or all deposits representing proceeds
44 of such instruments or agreements.

45 c. Pledge collateral to the treasurer of state
46 having a value at all times up to one hundred ten
47 percent of the public funds held by the bank.

48 d. Comply with such other requirements as the
49 superintendent may impose."

50 32. By striking page 12, line 18, through page

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Page 8

- 1 13, line 10.
- 2 33. Page 13, line 12, by striking the figure
- 3 "2001" and inserting the following: "2002".
- 4 34. Page 13, lines 14 and 15, by striking the
- 5 word and figures "February 10, 2002" and inserting the
- 6 following: "January 31, 2003".
- 7 35. Page 13, line 18, by striking the word and
- 8 figures "June 20, 2002" and inserting the following:
- 9 "April 30, 2003".
- 10 36. Page 13, line 21, by striking the figure
- 11 "2002" and inserting the following: "2003".
- 12 37. By renumbering, relettering, and
- 13 redesignating as necessary.

By COMMITTEE ON COMMERCE
JOHN W. JENSEN, Chairperson

S-5015 FILED FEBRUARY 5, 2002

Adopted
2/27/02
(p. 437)

SENATE AMENDMENT TO HOUSE FILE 681

H-8128

1 Amend House File 681, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 12C.1, subsection 2, paragraph
6 c, Code Supplement 2001, is amended to read as
7 follows:

8 c. "Bank" means a corporation engaged in the
9 business of banking authorized by law to receive
10 deposits and whose deposits are insured by the bank
11 insurance fund or the savings association insurance
12 fund of the federal deposit insurance corporation and
13 includes any office of a bank. "Bank" also means a
14 savings and loan or savings association."

15 2. Page 1, line 1, by inserting after the word
16 "Code" the following: "Supplement".

17 3. Page 1, by inserting after line 20 the
18 following:

19 "Sec. _____. Section 12C.6A, subsection 2, Code
20 2001, is amended to read as follows:

21 2. In addition to establishing a minimum interest
22 rate for public funds pursuant to section 12C.6, the
23 committee composed of the superintendent of banking,
24 the superintendent of credit unions, the auditor of
25 state or a designee, and the treasurer of state shall
26 develop a list of financial institutions eligible to
27 accept state public funds. The committee shall
28 require that a financial institution seeking to
29 qualify for the list shall annually provide the
30 committee a written statement that the financial
31 institution has complied with the requirements of this
32 chapter and has a commitment to community reinvestment
33 consistent with the safe and sound operation of a
34 financial institution, unless the financial
35 institution has received a rating of satisfactory or
36 higher pursuant to the federal Community Reinvestment
37 Act, 12 U.S.C. § 2901 et seq., and such rating is
38 certified to the committee by the superintendent of
39 banking. To qualify for the list a financial
40 institution must demonstrate a continuing commitment
41 to meet the credit needs of the local community in
42 which it is chartered."

43 4. Page 2, by striking lines 2 through 18 and
44 inserting the following:

45 "Sec. _____. NEW SECTION. 12C.20 PUBLIC FUND
46 REPORTS.

47 1. On or before the tenth day of February, May,
48 August, and November of each year, each savings and
49 loan and each out-of-state bank that has one or more
50 branches in the state shall calculate and certify to

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Page 2

1 the superintendent of banking in the form prescribed
2 by the superintendent the amount of public funds on
3 deposit at the savings and loan and at each such
4 branch of the out-of-state bank as of the end of the
5 previous calendar quarter.

6 2. A bank shall, upon request of the
7 superintendent, certify to the superintendent the
8 amount of public funds on deposit at the bank and at
9 each branch of an out-of-state bank on any day
10 specified by the superintendent in such request.

11 3. The superintendent may at any time make such
12 investigation as the superintendent deems necessary
13 and appropriate to verify the information provided to
14 the superintendent pursuant to subsections 1 and 2.

15 4. On or before the twentieth day of February,
16 May, August, and November of each year, the
17 superintendent shall notify the treasurer of state of
18 the amount of collateral required to be pledged as of
19 the end of the previous calendar quarter based upon
20 the certification provided to the superintendent under
21 subsection 1 or 2 and a review by the superintendent
22 of the quarterly call report filed by each bank that
23 is not a savings and loan or an out-of-state bank."

24 5. Page 2, line 21, by striking the words
25 "financial institution that is a".

26 6. Page 2, lines 23 and 24, by striking the words
27 "before the first day of each calendar quarter".

28 7. Page 2, line 27, by striking the words "same
29 depository or holding company" and inserting the
30 following: "bank pledging the collateral or any
31 affiliate of the bank as defined in section 524.1101".

32 8. Page 3, line 7, by inserting after the word
33 "bank" the following: "by paying an assessment to the
34 treasurer of state".

35 9. Page 3, by striking lines 9 through 13 and
36 inserting the following:

37 "c. In the event an assessment is paid by a bank
38 to the treasurer of state pursuant to section 12C.23A,
39 or in the event that collateral pledged by the bank is
40 liquidated pursuant to section 12C.23A, subsection 3,
41 paragraph "e", and the proceeds are used to pay the
42 assessment, the bank is subrogated to the claim of a
43 public funds depositor to the extent the claim is paid
44 from funds paid by the bank or proceeds of collateral
45 pledged by the bank are used to pay the assessment."

46 10. Page 3, line 14, by inserting after the word
47 "agent" the following: "of the bank".

48 11. By striking page 3, line 19, through page 5,
49 line 33, and inserting the following:

50 "2. The amount of the collateral required to be

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1 pledged by a bank shall at all times equal or exceed
2 the total of the amount by which the public funds
3 deposits in the bank exceeds the total capital of the
4 bank. For purposes of this chapter, unless the
5 context otherwise requires, "total capital of the
6 bank" means its tier one capital plus both of the
7 following components of tier two capital:

8 a. Qualifying subordinated debt and redeemable
9 preferred stock.

10 b. Cumulative perpetual preferred stock.

11 3. The amount of collateral pledged by an out-of-
12 state bank that operates a branch in Iowa shall be
13 calculated in accordance with the following formula:

14 a. Total deposits of the bank.

15 b. Total deposits in Iowa branches of the bank.

16 c. The total of paragraph "b" divided by the total
17 of paragraph "a", in order to establish the deposits
18 of Iowa branches as a percentage of total deposits.

19 d. Total capital of the bank as defined in
20 subsection 2.

21 e. The total of paragraph "d" multiplied by the
22 total of paragraph "c", in order to establish Iowa
23 branch capital.

24 f. Total public funds deposits in the bank.

25 g. The excess of the total of paragraph "f" over
26 the total of paragraph "e", if any.

27 4. The value of the collateral shall be its market
28 value.

29 5. The treasurer of state shall adopt rules
30 pursuant to chapter 17A to administer this section,
31 including rules to do the following:

32 a. Designate not less than four financial
33 institutions that may be custodians of collateral
34 pledged under this chapter and establish regulations
35 for qualification and compliance by the custodians and
36 remedies and sanctions for noncompliance by the
37 custodians.

38 b. Establish requirements for reporting to the
39 treasurer of state by a financial institution of the
40 amount and value of collateral held by the financial
41 institution as custodian of collateral for the
42 uninsured public funds on deposit in a bank.

43 c. Establish procedures for the valuation of
44 collateral that does not have a readily ascertainable
45 market value.

46 d. Establish procedures for substituting different
47 collateral for collateral pledged under this section.

48 e. Establish procedures to determine the amount of
49 the uninsured public funds of each bank or branch of
50 an out-of-state bank as of the date of closing of a

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1 closed bank and the amount of the assessment to be
2 made upon each bank.

3 f. Establish additional procedures necessary to
4 administer this chapter and other rules as may be
5 necessary to accomplish the purposes of this chapter.

6 g. Provide forms and procedures for compliance
7 with this chapter, including electronic compliance.

8 h. Establish amounts and procedures for payment of
9 fees to cover the costs of administration of this
10 chapter.

11 6. The collateral used to secure public deposits
12 shall be in one or more of the following forms
13 acceptable to the treasurer of state:

14 a. Investment securities and shares in which a
15 bank is permitted to invest under section 524.901,
16 subsections 1, 2, and 3.

17 b. Investment securities, as defined in section
18 524.901, subsection 1, paragraph "a", representing
19 general obligations of a state or a political
20 subdivision of a state that is geographically
21 contiguous with the state, provided that such
22 investment securities are rated within the four
23 highest grades according to a reputable rating service
24 or represent unrated issues of equivalent value.

25 c. Investment securities, as defined in section
26 524.901, subsection 1, paragraph "a", representing
27 general obligations of a state or a political
28 subdivision of a state that is not contiguous with the
29 state, provided that such investment securities are
30 rated within the two highest grades according to a
31 reputable rating service.

32 d. Nontransferable letters of credit upon which
33 the payment of principal and interest is fully secured
34 or guaranteed by the United States of America or an
35 agency or instrumentality, including government-
36 sponsored enterprises of the United States of America.

37 e. Private insurance policies or bonds written by
38 companies approved by the superintendent.

39 7. A bank may borrow collateral to be pledged
40 under subsection 2 if the collateral is free of any
41 liens, security interests, claims, or encumbrances."

42 12. Page 6, lines 2 and 3, by striking the words
43 "and the pledging of securities".

44 13. By inserting after page 6, line 4, the
45 following:

46 " . Agreement by the bank to pledge collateral
47 as required by section 12C.22."

48 14. Page 6, line 5, by striking the word
49 "securities" and inserting the following: "the
50 collateral".

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- 1 15. Page 6, line 14, by striking the word
2 "certificates" and inserting the following:
3 "~~certificates~~ certificate".
- 4 16. Page 6, line 19, by inserting after the word
5 "state" the following: "under subsection 3".
- 6 17. Page 6, lines 21 and 22, by striking the
7 words "regulatory officials" and inserting the
8 following: "regulatory officials state or federal
9 regulator".
- 10 18. Page 6, line 32, by striking the word "the"
11 and inserting the following: "a".
- 12 19. Page 6, line 33, by striking the word
13 "depositors" and inserting the following: "depositors
14 depositor".
- 15 20. Page 7, by striking lines 31 through 34, and
16 inserting the following: "total of uninsured public
17 funds deposits held by all banks and all branches of
18 out-of-state banks, based upon the average of the
19 uninsured public funds of the assessed bank or branch
20 of an out-of-state bank as of the end of the four
21 calendar quarters prior to the date of closing of the
22 closed bank and the average of the uninsured public
23 funds in all banks and branches of out-of-state banks
24 as of the end of the four calendar quarters prior to
25 the date of closing of the closed bank, excluding the
26 amount of uninsured public funds held by the closed
27 bank at the end of the four calendar quarters held by
28 the closed bank. Each bank".
- 29 21. Page 8, line 12, by striking the words "that
30 amount" and inserting the following: "the amount".
- 31 22. Page 8, by inserting after line 14 the
32 following:
33 "f. If the treasurer of state liquidates
34 collateral pledged by a bank, the bank shall within
35 three business days following receipt of notice from
36 the treasurer of state deposit additional collateral
37 to provide the collateral required under section
38 12C.22."
- 39 23. Page 8, line 15, by striking the letter "f."
40 and inserting the following: "g."
- 41 24. Page 8, by striking lines 20 and 21 and
42 inserting the following: "failure to pay the
43 assessment. If the bank that has failed to pay the
44 assessment is a nationally chartered financial
45 institution, the superintendent shall immediately
46 notify the bank's primary federal regulator. If the
47 assessment is not paid within thirty days after the
48 bank received the notice of assessment, the treasurer
49 of state shall initiate a lawsuit to collect the
50 amount of the assessment. If a bank is found to".

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1 25. By striking page 8, line 33, through page 9,
2 line 7, and inserting the following:

3 "e. h. Following collection of the assessments,
4 the ~~state~~ treasurer of state shall distribute funds to
5 the public depositors of the ~~failed~~ closed bank
6 according to their validated claims unless a public
7 depositor requests in writing that the claims of other
8 public depositors be paid prior to payment to the
9 public depositor making the request. If the assets
10 available are less than the total deposits, the
11 treasurer shall prorate the claims. A public
12 depositor By receiving payment under this section, a
13 public depositor shall assign be deemed to have
14 assigned to the treasurer of state any interest claim
15 the public depositor may have against the closed bank
16 by reason of the deposit of its public funds and all
17 rights the public depositor may have in funds that
18 subsequently become available to depositors of the
19 defaulting closed bank."

20 26. Page 9, by striking lines 12 through 26, and
21 inserting the following: "chapter in a financial
22 institution that is eligible to accept public funds
23 deposits at the time a deposit of public funds is
24 made, a public body depositing public funds or its
25 agents, employees, officers, and board members are,
26 and any person that is an agent, employee, officer, or
27 board member of the public funds depositor, is exempt
28 from liability for any loss resulting from the loss of
29 a depository public funds in the absence of
30 negligence, malfeasance, misfeasance, or nonfeasance
31 on the part of the official public body or such
32 person. If the treasurer of state sells a
33 depository's collateral securities, the depository
34 shall deposit additional collateral to meet required
35 collateral levels.

36 ~~In making an assessment against depositories~~
37 ~~holding public funds as a result of a failure, the~~
38 ~~treasurer of state is exempt from any liability for~~
39 ~~loss, damage or expense to a depository which has~~
40 ~~accepted public funds."~~

41 27. Page 9, by adding after line 35 the
42 following:

43 "Sec. ____ . Section 12C.26, Code 2001, is amended
44 by striking the section and inserting in lieu thereof
45 the following:

46 12C.26 REFUND FROM SINKING FUNDS.

47 1. If at the end of any calendar year the amount
48 in the sinking fund exceeds three million one hundred
49 thousand dollars, then to the extent the amount in the
50 sinking fund exceeds three million dollars, the

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1 treasurer shall, on or before January 31 of the
2 following year, refund to each bank that paid an
3 assessment after the year 1999 to the sinking fund
4 resulting from the closing of a bank, its pro rata
5 share of the unreimbursed portion of the total
6 assessment paid by all banks. If assessments remain
7 unreimbursed by reason of the closing of more than one
8 bank, the reimbursements shall be made to the banks
9 that paid assessments by reason of the bank which
10 closed first until those banks are reimbursed in full,
11 and then to the banks that paid assessments by reason
12 of the bank which closed next. Such a refund shall
13 not be made to a bank if the refund would exceed the
14 amount of previous assessments paid by the bank.

15 2. Upon recovery of a loss of public funds due to
16 a closed credit union, the treasurer of state may
17 refund all or a portion of the recovered amount to the
18 credit unions that paid an assessment under this
19 chapter as a result of the closing of that credit
20 union."

21 28. Page 10, by striking lines 29 through 32 and
22 inserting the following: "adopt and promulgate such
23 rules and regulations as ~~in the superintendent's~~
24 ~~opinion will be necessary to properly and effectively~~
25 carry out and enforce, properly and effectively, the
26 provisions of this chapter and chapter 12C applicable
27 to banks."

28 29. Page 11, line 34, by inserting after the word
29 "may" the following: "recommend to the committee
30 established under section 12C.6 that the bank be
31 removed from the list of financial institutions
32 eligible to accept public funds under section 12C.6A
33 and may".

34 30. Page 11, line 35, by inserting after the
35 words "quarter and" the following: "up to".

36 31. Page 12, by striking lines 1 through 6, and
37 inserting the following: "the bank do any one or more
38 of the following:

39 a. Not accept public funds deposits.

40 b. Return to the depositors some or all uninsured
41 public funds held in demand deposits and, when deposit
42 instruments or agreements mature, return to the
43 depositors some or all deposits representing proceeds
44 of such instruments or agreements.

45 c. Pledge collateral to the treasurer of state
46 having a value at all times up to one hundred ten
47 percent of the public funds held by the bank.

48 d. Comply with such other requirements as the
49 superintendent may impose."

50 32. By striking page 12, line 18, through page

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- 1 13, line 10.
2 33. Page 13, line 12, by striking the figure
3 "2001" and inserting the following: "2002".
4 34. Page 13, lines 14 and 15, by striking the
5 word and figures "February 10, 2002" and inserting the
6 following: "January 31, 2003".
7 35. Page 13, line 18, by striking the word and
8 figures "June 20, 2002" and inserting the following:
9 "April 30, 2003".
10 36. Page 13, line 21, by striking the figure
11 "2002" and inserting the following: "2003".
12 37. By renumbering, relettering, and
13 redesignating as necessary.

RECEIVED FROM THE SENATE

H-8128 FILED FEBRUARY 28, 2002

House Concurred
3-25-02
(P.949)

HOUSE FILE 681

AN ACT

REQUIRING THE PLEDGING OF COLLATERAL IN RELATION TO THE
DEPOSIT OF UNINSURED PUBLIC FUNDS, MAKING RELATED CHANGES,
MAKING PENALTIES APPLICABLE, AND PROVIDING FOR APPLICABILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 12C.1, subsection 2, paragraph c, Code Supplement 2001, is amended to read as follows:

c. "Bank" means a corporation engaged in the business of banking authorized by law to receive deposits and whose deposits are insured by the bank insurance fund or the savings association insurance fund of the federal deposit insurance corporation and includes any office of a bank. "Bank" also means a savings and loan or savings association.

Sec. 2. Section 12C.1, subsection 2, Code Supplement 2001, is amended by adding the following new paragraphs:

NEW PARAGRAPH. g. "Public officer" means the person authorized by and acting for a public body to deposit public funds of the public body.

NEW PARAGRAPH. h. "Uninsured public funds" means any amount of public funds of a public funds depositor on deposit

in an account at a financial institution that exceeds the amount of public funds in that account that are insured by the federal deposit insurance corporation or the national credit union administration.

Sec. 3. Section 12C.2, Code 2001, is amended to read as follows:

12C.2 APPROVAL -- REQUIREMENTS.

The approval of a financial institution as a depository of public funds for a public body shall be by written resolution or order which that shall be entered of record in the minutes of the approving board, and which that shall distinctly name each depository approved, and specify the maximum amount which that may be kept on deposit in each depository.

Sec. 4. Section 12C.6A, subsection 2, Code 2001, is amended to read as follows:

2. In addition to establishing a minimum interest rate for public funds pursuant to section 12C.6, the committee composed of the superintendent of banking, the superintendent of credit unions, the auditor of state or a designee, and the treasurer of state shall develop a list of financial institutions eligible to accept state public funds. The committee shall require that a financial institution seeking to qualify for the list shall annually provide the committee a written statement that the financial institution has complied with the requirements of this chapter and has a commitment to community reinvestment consistent with the safe and sound operation of a financial institution, unless the financial institution has received a rating of satisfactory or higher pursuant to the federal Community Reinvestment Act, 12 U.S.C. § 2901 et seq., and such rating is certified to the committee by the superintendent of banking. To qualify for the list a financial institution must demonstrate a continuing commitment to meet the credit needs of the local community in which it is chartered.

Sec. 5. Section 12C.6A, subsection 3, paragraph b, Code 2001, is amended to read as follows:

b. To receive challenges from any person to a financial institution's continued eligibility to receive state public funds.

Sec. 6. Section 12C.19, subsection 1, Code 2001, is amended to read as follows:

1. Securities pledged pursuant to this chapter may be withdrawn on application of the pledging depository institution, and as to securities pledged by a credit union, upon approval of the public officer to whom the securities are pledged, if the deposit of securities is no longer necessary to comply with this chapter, or is required for collection by virtue of its maturity or for exchange. The depository institution shall replace securities so withdrawn for collection or exchange.

Sec. 7. NEW SECTION. 12C.20 PUBLIC FUND REPORTS.

1. On or before the tenth day of February, May, August, and November of each year, each savings and loan and each out-of-state bank that has one or more branches in the state shall calculate and certify to the superintendent of banking in the form prescribed by the superintendent the amount of public funds on deposit at the savings and loan and at each such branch of the out-of-state bank as of the end of the previous calendar quarter.

2. A bank shall, upon request of the superintendent, certify to the superintendent the amount of public funds on deposit at the bank and at each branch of an out-of-state bank on any day specified by the superintendent in such request.

3. The superintendent may at any time make such investigation as the superintendent deems necessary and appropriate to verify the information provided to the superintendent pursuant to subsections 1 and 2.

4. On or before the twentieth day of February, May, August, and November of each year, the superintendent shall

notify the treasurer of state of the amount of collateral required to be pledged as of the end of the previous calendar quarter based upon the certification provided to the superintendent under subsection 1 or 2 and a review by the superintendent of the quarterly call report filed by each bank that is not a savings and loan or an out-of-state bank.

Sec. 8. NEW SECTION. 12C.22 REQUIRED COLLATERAL -- BANKS.

1. A bank shall pledge to the treasurer of state the amount of collateral required under subsection 2 by depositing the collateral in restricted accounts at a financial institution that has been designated by the treasurer of state and that is not owned or controlled directly or indirectly by the bank pledging the collateral or any affiliate of the bank as defined in section 524.1101. Each bank shall execute as debtor and deliver to the treasurer of state a security agreement and such other documents, instruments, and agreements in form approved by the treasurer of state as are required to grant to the treasurer of state, as secured party in its capacity as agent for the depositors of all public funds from time to time deposited in the bank, a perfected security interest in the collateral described in the security agreement. The security agreement shall among other provisions contain all of the following provisions:

a. A security interest in the collateral is granted as collateral for the obligation of the bank to repay all uninsured public funds deposited in the bank.

b. The security interest in the collateral is also granted as collateral security for the obligation of the bank to repay the uninsured public funds deposited in a closed bank by paying an assessment to the treasurer of state to the extent required under section 12C.23A, subsection 3.

c. In the event an assessment is paid by a bank to the treasurer of state pursuant to section 12C.23A, or in the event that collateral pledged by the bank is liquidated

pursuant to section 12C.23A, subsection 3, paragraph "e", and the proceeds are used to pay the assessment, the bank is subrogated to the claim of a public funds depositor to the extent the claim is paid from funds paid by the bank or proceeds of collateral pledged by the bank are used to pay the assessment.

d. The treasurer of state is appointed as agent of the bank to assert the claim on behalf of the bank as subrogee. Any amount recovered by the treasurer by reason of the claim shall be deposited in the state sinking fund for public deposits in banks.

2. The amount of the collateral required to be pledged by a bank shall at all times equal or exceed the total of the amount by which the public funds deposits in the bank exceeds the total capital of the bank. For purposes of this chapter, unless the context otherwise requires, "total capital of the bank" means its tier one capital plus both of the following components of tier two capital:

a. Qualifying subordinated debt and redeemable preferred stock.

b. Cumulative perpetual preferred stock.

3. The amount of collateral pledged by an out-of-state bank that operates a branch in Iowa shall be calculated in accordance with the following formula:

a. Total deposits of the bank.

b. Total deposits in Iowa branches of the bank.

c. The total of paragraph "b" divided by the total of paragraph "a", in order to establish the deposits of Iowa branches as a percentage of total deposits.

d. Total capital of the bank as defined in subsection 2.

e. The total of paragraph "d" multiplied by the total of paragraph "c", in order to establish Iowa branch capital.

f. Total public funds deposits in the bank.

g. The excess of the total of paragraph "f" over the total of paragraph "e", if any.

4. The value of the collateral shall be its market value.

5. The treasurer of state shall adopt rules pursuant to chapter 17A to administer this section, including rules to do the following:

a. Designate not less than four financial institutions that may be custodians of collateral pledged under this chapter and establish regulations for qualification and compliance by the custodians and remedies and sanctions for noncompliance by the custodians.

b. Establish requirements for reporting to the treasurer of state by a financial institution of the amount and value of collateral held by the financial institution as custodian of collateral for the uninsured public funds on deposit in a bank.

c. Establish procedures for the valuation of collateral that does not have a readily ascertainable market value.

d. Establish procedures for substituting different collateral for collateral pledged under this section.

e. Establish procedures to determine the amount of the uninsured public funds of each bank or branch of an out-of-state bank as of the date of closing of a closed bank and the amount of the assessment to be made upon each bank.

f. Establish additional procedures necessary to administer this chapter and other rules as may be necessary to accomplish the purposes of this chapter.

g. Provide forms and procedures for compliance with this chapter, including electronic compliance.

h. Establish amounts and procedures for payment of fees to cover the costs of administration of this chapter.

6. The collateral used to secure public deposits shall be in one or more of the following forms acceptable to the treasurer of state:

a. Investment securities and shares in which a bank is permitted to invest under section 524.901, subsections 1, 2, and 3.

b. Investment securities, as defined in section 524.901, subsection 1, paragraph "a", representing general obligations of a state or a political subdivision of a state that is geographically contiguous with the state, provided that such investment securities are rated within the four highest grades according to a reputable rating service or represent unrated issues of equivalent value.

c. Investment securities, as defined in section 524.901, subsection 1, paragraph "a", representing general obligations of a state or a political subdivision of a state that is not contiguous with the state, provided that such investment securities are rated within the two highest grades according to a reputable rating service.

d. Nontransferable letters of credit upon which the payment of principal and interest is fully secured or guaranteed by the United States of America or an agency or instrumentality, including government-sponsored enterprises of the United States of America.

e. Private insurance policies or bonds written by companies approved by the superintendent.

7. A bank may borrow collateral to be pledged under subsection 2 if the collateral is free of any liens, security interests, claims, or encumbrances.

Sec. 9. Section 12C.23A, Code 2001, is amended to read as follows:

12C.23A PAYMENT OF LOSSES IN A BANK.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes consent all of the following:

a. Agreement by the bank to pledge collateral as required by section 12C.22.

b. Consent by the bank to the disposition of the collateral in accordance with this section.

c. Consent by the bank to assessments by the treasurer of state in accordance with this chapter.

d. Agreement by the bank to provide accurate information and to otherwise comply with the requirements of this chapter.

2. The A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by the-public-officer a public funds depositor or to account for a check, draft, warrant, order, or certificates certificate of deposit, or any public funds entrusted to it the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public body-treasurer funds depositor. The bank is also liable to the treasurer of state for payment if the bank fails to pay an assessment by the treasurer of state under subsection 3 when the assessment is due.

3. If a bank is closed by its primary regulatory-officials state or federal regulator, the-public-body each public funds depositor with deposits in the bank shall notify the treasurer of state of the amount of any claim within thirty days of the closing. The treasurer of state shall implement the following procedures:

a. In cooperation with the responsible regulatory officials for the closed bank, the treasurer shall validate the amount of public funds on deposit at the defaulting closed bank and the amount of deposit insurance applicable to the deposits.

b. The-recovery-of-any Any loss to public a public funds depositors depositor shall begin-with-applicable be satisfied first by any federal deposit insurance, then by the sale or other disposition of collateral pledged by the closed bank, then from the assets of the closed bank. The To the extent permitted by federal law, the priority of claims are those established pursuant to section 524.1312, subsection 2. To the extent permitted by federal law, in the distribution of an insolvent federally chartered bank's assets, the order of payment of liabilities, if its assets are insufficient to pay in full all its liabilities for which claims are made, shall be in the same order as for a state-chartered state bank as provided in section 524.1312, subsection 2.

c. The claim of a public funds depositor for purposes of this section shall be the amount of the depositor's public funds deposits plus interest to the date the funds are distributed to the public funds depositor at the rate the bank agreed to pay on the public funds reduced by the portion of the public funds which that is insured by federal deposit insurance.

d. If the loss to of public funds is not covered by federal deposit insurance and the proceeds of the failed closed bank's assets which that are liquidated within thirty days of the closing of the bank are not sufficient to cover the loss, then any further payments to cover the loss will come from the state sinking fund for public deposits in banks. If the balance in that sinking fund is inadequate to pay the entire loss, then the treasurer shall obtain the additional amount needed by making an assessment against other banks whose public funds deposits exceed federal deposit insurance coverage. A bank's assessment shall be determined by multiplying the total amount of the remaining loss to all public depositors in the closed bank by a percentage that represents that the assessed bank's proportional share of the total of uninsured public funds deposits held by all banks and all branches of out-of-state banks, based upon the average of the uninsured public funds of the assessed bank or branch of an out-of-state bank as of the end of the four calendar quarters prior to the date of closing of the closed bank and the average of the uninsured public funds in all banks and branches of out-of-state banks as of the end of the four calendar quarters prior to the date of closing of the closed bank, excluding the amount of uninsured public funds held by the closed bank at the end of the four calendar quarters held by the closed bank. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment.

e. If a bank fails to pay its assessment when due, the treasurer of state shall initiate-a-lawsuit-to-collect satisfy the assessment by liquidating collateral pledged by the bank upon such notice as is required by chapter 554. If the collateral pledged by the bank is inadequate to pay the assessment, the treasurer of state shall make additional assessments as may be necessary against other banks that hold uninsured public funds to satisfy any unpaid assessment. Any additional assessments shall be determined, collected, and satisfied in the same manner as the first assessment except that in calculating the amount of each such additional assessment, the amount of uninsured public funds held by the bank that fails to pay the assessment shall not be counted.

f. If the treasurer of state liquidates collateral pledged by a bank, the bank shall within three business days following receipt of notice from the treasurer of state deposit additional collateral to provide the collateral required under section 12C.22.

g. If a bank fails to pay its assessment when due and the proceeds from liquidation of the collateral pledged by the bank are not sufficient to pay the assessment against the bank, the treasurer of state shall notify the superintendent or the comptroller of the currency, as applicable, of the failure to pay the assessment. If the bank that has failed to pay the assessment is a nationally chartered financial institution, the superintendent shall immediately notify the bank's primary federal regulator. If the assessment is not paid within thirty days after the bank received the notice of assessment, the treasurer of state shall initiate a lawsuit to collect the amount of the assessment. If a bank is found to have failed to pay the assessment as required by this paragraph, subsection and is ordered to pay the assessment, the court shall also order ~~it-to~~ that the bank pay the assessment, court costs, and reasonable attorney fees based on the amount of time the attorney general's office spent

preparing and bringing the action, and reasonable expenses incurred by the treasurer of state. ~~Idle balances in the fund shall be invested by the treasurer with earnings credited to the fund. Fees paid by banks for administration of this chapter shall be credited to the fund and the treasurer may deduct actual costs of administration from the fund.~~

e- h. Following collection of the assessments, the state treasurer of state shall distribute funds to the public depositors of the failed closed bank according to their validated claims unless a public depositor requests in writing that the claims of other public depositors be paid prior to payment to the public depositor making the request. ~~If the assets available are less than the total deposits, the treasurer shall prorate the claims. A public depositor~~ By receiving payment under this section, a public depositor shall assign be deemed to have assigned to the treasurer of state any interest claim the public depositor may have against the closed bank by reason of the deposit of its public funds and all rights the public depositor may have in funds that subsequently become available to depositors of the defaulting closed bank.

Sec. 10. Section 12C.24, Code 2001, is amended to read as follows:

12C.24 LIABILITY.

When public deposits are made in accordance with this chapter in a financial institution that is eligible to accept public funds deposits at the time a deposit of public funds is made, a public body depositing public funds ~~or its agents, employees, officers, and board members are,~~ and any person that is an agent, employee, officer, or board member of the public funds depositor, is exempt from liability for any loss resulting from the loss of a depository public funds in the absence of negligence, malfeasance, misfeasance, or nonfeasance on the part of the official public body or such person. ~~If the treasurer of state sells a depository's~~

~~collateral securities, the depository shall deposit additional collateral to meet required collateral levels.~~

~~In making an assessment against depositories holding public funds as a result of a failure, the treasurer of state is exempt from any liability for loss, damage or expense to a depository which has accepted public funds.~~

Sec. 11. Section 12C.25, Code 2001, is amended by adding the following new unnumbered paragraph after subsection 2:

NEW UNNUMBERED PARAGRAPH. Idle balances in the state sinking fund for public deposits in banks shall be invested by the treasurer of state with earnings credited to that fund. Fees paid by banks for administration of this chapter shall be credited to the state sinking fund for public deposits in banks and the treasurer of state may deduct actual costs of administration from that fund.

Sec. 12. Section 12C.26, Code 2001, is amended by striking the section and inserting in lieu thereof the following:

12C.26 REFUND FROM SINKING FUNDS.

1. If at the end of any calendar year the amount in the sinking fund exceeds three million one hundred thousand dollars, then to the extent the amount in the sinking fund exceeds three million dollars, the treasurer shall, on or before January 31 of the following year, refund to each bank that paid an assessment after the year 1999 to the sinking fund resulting from the closing of a bank, its pro rata share of the unreimbursed portion of the total assessment paid by all banks. If assessments remain unreimbursed by reason of the closing of more than one bank, the reimbursements shall be made to the banks that paid assessments by reason of the bank which closed first until those banks are reimbursed in full, and then to the banks that paid assessments by reason of the bank which closed next. Such a refund shall not be made to a bank if the refund would exceed the amount of previous assessments paid by the bank.

2. Upon recovery of a loss of public funds due to a closed credit union, the treasurer of state may refund all or a portion of the recovered amount to the credit unions that paid an assessment under this chapter as a result of the closing of that credit union.

Sec. 13. NEW SECTION. 12C.27 FAILURE TO MAINTAIN REQUIRED COLLATERAL.

If a bank fails to maintain the amount of collateral subject to a perfected security interest held by the treasurer of state required to comply with section 12C.22, subsections 2 and 3, the treasurer of state shall notify the bank of the amount of additional collateral required. If the bank fails to provide the additional required collateral within ten days following the date the notice is given, the treasurer shall notify the office of thrift supervision, the office of the comptroller of the currency, or the superintendent as applicable, who may take such action against the bank, its board of directors and officers as permitted by law.

Sec. 14. NEW SECTION. 12C.28 ELECTRONIC REPORTING.

Any notice, information, report, or other communication required by this chapter shall be deemed effective and in compliance with this chapter if sent or given electronically as provided in rules adopted pursuant to chapter 17A by the superintendent or the treasurer of state.

Sec. 15. Section 524.213, Code 2001, is amended to read as follows:

524.213 DUTIES AND POWERS OF SUPERINTENDENT.

The superintendent shall have general control, supervision and regulation of all state banks and shall be charged with the administration and execution of the laws of this state relating to banks and banking and with such other duties and responsibilities as are imposed upon the superintendent by the laws of this state. The superintendent shall have power to adopt and promulgate such rules and regulations as ~~in the superintendent's opinion will be necessary to properly and~~

~~effectively~~ carry out and enforce, properly and effectively, the provisions of this chapter and chapter 12C applicable to banks.

Sec. 16. Section 524.223, Code 2001, is amended to read as follows:

524.223 POWER OF SUPERINTENDENT TO ISSUE ORDERS.

1. Whenever it shall appear to the superintendent that a state bank is engaging or has engaged, or the superintendent has reasonable cause to believe that the state bank is about to engage, in an unsafe or unsound practice in conducting the business of such state bank, or is violating or has violated, or the superintendent has reasonable cause to believe that the state bank is about to violate, any provision of this chapter or of any regulation adopted pursuant to this chapter, or any condition imposed in writing by the superintendent in connection with the approval of any matter required by this chapter, or any written agreement entered into with the superintendent, or any provision of chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may issue and serve upon the state bank a notice containing a statement of the facts constituting the alleged violation or violations, or the unsafe or unsound practice or practices, and fixing a time and place at which a hearing will be held to determine whether an order to cease and desist ~~therefrom~~ should be issued to the state bank.

2. If the state bank fails to appear at the hearing it shall be deemed to have consented to the issuance of a cease and desist order. In the event of such consent, or if upon the record made at such hearing, the superintendent shall find that any violation or unsafe or unsound practice specified in the notice has been established, the superintendent may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may require the state bank and its directors, officers and employees to cease and desist from any such violation or practice and, further, to

take affirmative action to correct the conditions resulting from any such violation or practice. In addition, if the violation or practice involves a failure to comply with chapter 12C or any rules adopted pursuant to chapter 12C, the superintendent may recommend to the committee established under section 12C.6 that the bank be removed from the list of financial institutions eligible to accept public funds under section 12C.6A and may require that during the current calendar quarter and up to the next succeeding eight calendar quarters that the bank do any one or more of the following:

- a. Not accept public funds deposits.
- b. Return to the depositors some or all uninsured public funds held in demand deposits and, when deposit instruments or agreements mature, return to the depositors some or all deposits representing proceeds of such instruments or agreements.
- c. Pledge collateral to the treasurer of state having a value at all times up to one hundred ten percent of the public funds held by the bank.
- d. Comply with such other requirements as the superintendent may impose.

3. Any order issued pursuant to this section shall become effective upon service thereof of the order on the state bank and shall remain effective except to such extent that it is stayed, modified, terminated, or set aside by action of the superintendent or of the district court of the county in which the state bank has its principal place of business.

4. The superintendent may apply to the district court of the county in which the state bank has its principal place of business for the enforcement of any order pursuant to this section and such court shall have jurisdiction and power to order and require compliance therewith.

Sec. 17. EFFECTIVE DATE AND APPLICABILITY. This Act takes effect on July 1, 2002, with the following exceptions:

1. Certification to the superintendent under section 12C.20, subsection 1, shall not be required until January 31, 2003.
2. Notification by the superintendent to the treasurer of state under section 12C.20, subsection 4, shall not be required until April 30, 2003.
3. The pledging of collateral to the treasurer of state pursuant to section 12C.22 shall not be required until July 1, 2003.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 681, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved 4/9, 2002

THOMAS J. VILSACK
Governor