

**Section 41-14A-1**

**Short title.**

This chapter may be cited as the "Security for Alabama Funds Enhancement Act."

*(Act 2000-748, p. 1669, §1.)*

**Section 41-14A-2**

**Definitions.**

As used in this chapter, the following words and terms shall have the following meanings:

(1) **AVERAGE MONTHLY BALANCE OF PUBLIC DEPOSITS.** The sum of the average daily balances of public deposits, meaning the net average daily balances of public deposits determined without any deduction for deposit insurance, for the reported month and the 11 months preceding that month, divided by 12.

(2) **BOARD OF DIRECTORS or BOARD.** The Board of Directors of the SAFE Program established under Section 41-14A-6. The board of directors shall consist of eight members.

(3) **COLLATERAL-PLEDGING LEVEL or COLLATERAL-PLEDGING REQUIREMENT.** The percentage or percentages of collateral, in relation to one or more levels of public deposits held, required to be pledged by a qualified public depository as determined in accordance with the provisions of this chapter or rules or orders of the board adopted pursuant to this chapter.

(4) **COVERED PUBLIC ENTITY.** The state and its political subdivisions, including its agencies, departments, boards, commissions, officers, public institutions of higher learning as defined in Section 16-5-1, and courts; counties, including the offices of their public officials, whether elected or appointed, and any of their agencies, departments, boards, school districts, commissions, and courts; municipalities, and any of their agencies, departments, boards, school districts, commissions, and courts; public corporations, including any public board, authority, or district, heretofore or hereafter organized or created in this state pursuant to authorization or determination of any municipality or municipalities or by any county or counties or the governing body of any one or more thereof and that receive any appropriations of funds by action of the Legislature of this state or any governing body of any political subdivision, municipality, or county of this state or that receive the proceeds of any tax levied pursuant to any statute of this state; any improvement authority incorporated under Chapter 7 of Title 39; any public corporation or instrumentality created under the statutes of this state enacted prior to January 1, 2001, that expressly provide that depositories of funds of such public corporation or instrumentality shall pledge collateral to secure the public corporation's or instrumentality's deposits; and any other public corporation created under statutes of this state enacted on or after January 1, 2001, that provide that the public corporation shall be subject to the provisions of this chapter.

(5) COVERED PUBLIC OFFICIAL. In the case of the State of Alabama, the State Treasurer or the State Treasurer's designee, and, in the case of each other covered public entity, the treasurer or other chief financial officer or public official, or designee thereof, responsible for handling deposits of any funds of such covered public entity.

(6) CUSTODIAN. Any bank, savings association, or trust company that:

a. Is organized and existing under the laws of this state, any other state of the United States, or the United States.

b. Has executed all forms required under this chapter or any rule adopted hereunder.

c. Agrees to be subject to the jurisdiction of the courts of this state, or of courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter.

d. Has been approved pursuant to this chapter to act as a custodian.

(7) DEFAULT or INSOLVENCY. The failure or refusal of a qualified public depository to pay any check or warrant drawn upon sufficient and collected funds by any public depositor or to return any deposit on demand or at maturity together with interest as agreed; the issuance of an order by any supervisory authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

(8) DEPOSIT INSURANCE. That amount of insurance provided by the Federal Deposit Insurance Corporation or its successor, applicable to each public depositor's public deposits in a particular financial institution.

(9) ELIGIBLE COLLATERAL. Any of the types of securities or other investment instruments designated as being eligible collateral for state depositories in Section 41-14-35.

(10) FINANCIAL INSTITUTION. A bank or savings association which is organized and existing under the laws of this state, any other state of the United States, or the United States, and which is authorized pursuant to the laws of this state or the United States to conduct, and is conducting, the business of making loans and taking deposits in this state.

(11) GENERALLY APPLICABLE PLEDGING LEVEL. Prior to December 31, 2003, 100 percent of a qualified public depository's net average daily balance of public deposits; and on and after December 31, 2003, the percentage of net average daily balance of public deposits established by the board of directors as the generally applicable collateral pledging level for qualified public depositories, provided, however, that the generally applicable collateral pledging level established by the board of directors shall not be less than 70 percent of a qualified public depository's net average daily balance of public deposits.

(12) LOSS PAYMENT FUND. The SAFE Loss Payment Fund established under Section 41-14A-10.

(13) LOSS TO PUBLIC DEPOSITORS. Loss of all or part of principal or all or part of interest, or both, or other earnings on the principal accrued or accruing as of the date the qualified public depository was declared in default or insolvent.

(14) NET AVERAGE DAILY BALANCE OF PUBLIC DEPOSITS. With respect to a reported month, the total of the daily account balances of all public deposits held by a qualified public depository, less applicable deposit insurance, divided by the number of calendar days in the month.

(15) PROGRAM ADMINISTRATION FUND. The SAFE Program Administration Fund established under Section 41-14A-12.

(16) PROGRAM ENFORCEMENT FUND. The SAFE Program Enforcement Fund established under Section 41-14A-13.

(17) PUBLIC DEPOSIT. The funds of any covered public entity or covered public official that are placed on deposit in a qualified public depository, including, but not limited to, time deposit accounts, demand deposit accounts, and certificates of deposit. All certificates of deposit, whether negotiable or nonnegotiable, shall be considered deposits and shall be subject to the provisions of this chapter. Funds held by a financial institution, on behalf of a covered public entity or covered public official, in securities and other investment vehicles, including, but not limited to, bonds, notes, bills, warrants, common trust funds, money market mutual funds and other mutual funds, investment trusts, repurchase agreements, and reverse repurchase agreements and similar instruments are considered investments and are not public deposits as defined in this subdivision.

(18) PUBLIC DEPOSITOR. Any covered public entity or covered public official which or who makes a public deposit.

(19) QUALIFIED PUBLIC DEPOSITORY. Any financial institution that has deposit insurance under the provisions of the Federal Deposit Insurance Act, 12 U.S.C. § 1811 et seq., that meets all of the requirements of this chapter, and that has been designated by the board as a qualified public depository.

(20) REQUIRED COLLATERAL. That eligible collateral which is required to be pledged by a qualified public depository in order to satisfy the qualified public depository's collateral-pledging requirement.

(21) SAFE COLLATERAL POOL. At any given time, the aggregate collateral pledged by all qualified public depositories pursuant to this chapter in connection with the SAFE Program.

(22) SAFE PROGRAM. The Security for Alabama Funds Enhancement Program established and to be administered under this chapter.

(23) STATE TREASURER. The Treasurer of the State of Alabama.

*(Act 2000-748, p. 1669, §1.)*

**Section 41-14A-3**

**Public deposits to be secured; exemptions.**

(a) On and after January 1, 2001:

(1) All public deposits of all covered public entities and covered public officials shall be governed by this chapter and shall be secured as provided in this chapter.

(2) All public depositors shall, notwithstanding any other laws to the contrary, place their public deposits with one or more qualified public depositories in accordance with this chapter. Notwithstanding the foregoing, funds placed in interest-bearing deposits through a qualified public depository pursuant to subsection (c) shall be exempt from the other requirements of this chapter.

(3) All financial institutions shall file the reports required by this chapter or by rule, regulation, or order of the board of directors and all financial institutions accepting any public deposits shall be a qualified public depository and shall comply with all provisions of this chapter, including, without limitation, the collateral pledging requirements of Section 41-14A-5.

(b) Funds held solely for the purpose of paying registrars or paying agents are exempt from the requirements of this chapter.

(c) In addition to any other authorization for the investment or deposit of funds by a public depositor, a public depositor may deposit funds in banks and savings associations that are not qualified public depositories provided that all of the following are satisfied:

(1) The public depositor enters into one or more agreements with a qualified public depository designated by the public depositor pursuant to which the qualified public depository agrees to arrange for the placement of funds of the public depositor in interest bearing deposits of other banks or savings associations in amounts not exceeding applicable Federal Deposit Insurance Corporation deposit insurance limits.

(2) To prevent deposits from exceeding the insurance coverage provided by the Federal Deposit Insurance Corporation, the public depositor provides the qualified public depository with a notification that identifies all banks and savings associations that are holding deposits on behalf of the public depositor and on behalf of any department, agency, or other instrumentality whose deposits would be aggregated with those of the public depositor in determining the maximum available Federal Deposit Insurance Corporation insurance coverage.

(3) The qualified public depository arranges for the deposit of the funds in one or more federally insured banks or savings associations, wherever located, for the account of the public depositor, provided, that the qualified public depository shall not arrange for the deposit of the funds with any bank or savings association identified in the notification provided by the public depositor pursuant to subdivision (2).

(4) Each deposit is entered in the records of the qualified public depository and the other banks and savings associations that receive or are credited with the deposit in such manner that the full amount of principal and accrued interest of the deposit is insured by the Federal Deposit Insurance Corporation.

(5) The deposits are held by the qualified public depository for the public depositor under a custodial arrangement.

(6) At the time the funds are deposited through the qualified public depository, the qualified public depository receives or is credited with an amount of deposits from customers of other federally insured banks or savings associations equal to or greater than the amount of funds deposited by the public depositor in other banks and savings associations through the qualified public depository.

(7) The public depositor receives confirmation of the deposits and periodic statements that reflect the ownership of the deposits by the public depositor, the names of the banks and savings associations that hold the deposits, and the interest rate or rates on the deposits.

(8) a. The qualified public depository agrees to provide to the Department of Examiners of Public Accounts, upon request, information necessary to permit the department to verify the deposits of the public depositor that are held by the banks and savings associations named on the confirmation of deposits and periodic statements and were placed through the qualified public depository.

b. Notwithstanding any other provision of law, any qualified public depository may release records and other documentation and information to the department for the purposes of this subdivision.

(d) Subsection (c) shall not apply to funds or moneys of the state that are deposited or invested by the State Treasurer pursuant to Chapter 14.

(e) No funds placed pursuant to subsection (c) shall be protected by the SAFE Program or eligible to participate in the SAFE collateral pool or the Loss Payment Fund.

*(Act 2000-748, p. 1669, §1; Act 2009-471, p. 835, §1.)*

**Section 41-14A-4**

**Establishment of Security for Alabama Funds Enhancement Program; powers and duties of the State Treasurer relating to the program; tax exemption for funds maintained by State Treasurer pursuant to chapter.**

There is hereby created the Security for Alabama Funds Enhancement (SAFE) Program. The SAFE Program shall be administered by the State Treasurer in accordance with the provisions of this chapter and rules, regulations, and guidelines established by the board of directors of the SAFE Program pursuant to Section 41-14A-6. The facilities and resources of the State

Treasurer's office shall be used and employed in the administration of the SAFE Program including the keeping of records and the management of funds and accounts.

In addition to all other powers and responsibilities assigned or undertaken by the State Treasurer under this chapter, the State Treasurer shall be authorized to undertake such powers and responsibilities as shall be delegated to the State Treasurer by the Board of Directors of the SAFE Program.

The Loss Payment Fund, the Program Administration Fund, the Program Enforcement Fund, and any other funds and accounts maintained by the State Treasurer pursuant to this chapter, and all interest and earnings from the investment thereof, shall be exempt from all taxation by the state and by all of its political subdivisions.

*(Act 2000-748, p. 1669, §1.)*

#### Section 41-14A-5

#### **Collateral for public deposits; general provisions.**

(a) Every qualified public depository shall maintain on deposit with a custodian, to be held subject to the order of the State Treasurer or the State Treasurer's designee (which may be a financial institution designated by the State Treasurer), eligible collateral having a market value equal to or in excess of the amount of collateral required under this section.

(b) Each qualified public depository shall be required to pledge collateral, in accordance with procedures established by the board of directors, equal to or exceeding the greater of the following: (1) The generally applicable pledging requirement; and (2) the applicable percentage of the qualified public depository's net average daily balance of public deposits established under rules or orders adopted pursuant to subsection (c) or subsection (d) below.

(c) The State Treasurer may, from time to time, in his or her discretion require that certain qualified public depositories pledge collateral at levels greater than the generally applicable pledging percentage, including, without limitation, in the case of a qualified public depository with capital accounts which exceed, or constitute an unacceptably high percentage of, the public deposits maintained with the qualified public depository, and in the case of qualified public depositories which the State Treasurer determines may present a higher risk of potential default or insolvency in light of when they commenced operation, recent decrease in capital accounts, recent change in financial condition, and similar matters. The State Treasurer may impose increased collateral-pledging requirements under this subsection pursuant to generally applicable rules and guidelines adopted by the board of directors or by entering orders applicable to individual qualified public depositories in accordance with criteria and conditions approved by the board of directors, or both. In the event the State Treasurer issues an order establishing an increased collateral-pledging level applicable to a particular qualified public depository, the State Treasurer shall promptly notify the affected qualified public depository in writing.

(d) The State Treasurer may impose higher collateral-pledging requirements on a qualified public depository to the extent that the public deposits maintained by the qualified public depository

exceed a specified percentage (the "designated concentration level") established by the board of directors by rule or regulation of the total public deposits held in all qualified public depositories, in which event each affected qualified public depository shall maintain a collateral-pledging level as follows:

(1) With respect to the qualified public depository's net average daily balance of public deposits that do not exceed the designated concentration level, the collateral-pledging requirement shall be determined under subsections (b) or (c) above, as applicable.

(2) With respect to the qualified public depository's net average daily balance of public deposits that exceed the designated concentration level, the collateral-pledging requirement shall be the percentage of net average daily balances of public deposits designated by the board.

Determination of whether any qualified public depository maintains collateral in excess of the designated concentration level shall be made by the State Treasurer on the basis of the net average monthly balance of public deposits during the immediately preceding 12-month period.

(e) Deposits of eligible collateral shall be made with a custodian in accordance with procedures established by the State Treasurer, including procedures relating to the execution of documentation to assure that the State Treasurer, on behalf of the Loss Payment Fund, will be able to liquidate collateral deposited by each qualified public depository in the event of a loss to public depositors. Each custodian shall be approved by the State Treasurer in accordance with rules, regulations, or guidelines adopted by the board of directors and the laws of this state.

A qualified public depository may not accept or retain any public deposits which are required to be secured unless it has first deposited eligible collateral equal to or exceeding its required collateral pursuant to this chapter. During any month, a qualified public depository may not accept any public deposit that would increase its net average daily balance of public deposits for that month by 25 percent over the net average daily balance of public deposits for the previously reported month unless it deposits or has on deposit additional required collateral to secure such increase and reports such additional collateral to the State Treasurer prior to the acceptance of such deposit.

(f) Collateral shall be valued in such manner as shall be established in rules or regulations adopted by the board of directors, provided that valuations may not be required more frequently than monthly for any qualified public depositories other than in the case of depositories which are then subject to any suspension, disqualification, or cease and desist order under this chapter. Withdrawals and substitutions of collateral pledged by qualified public depositories shall not be permitted without the approval of the State Treasurer. The State Treasurer shall adopt rules, regulations, or guidelines to permit qualified public depositories to withdraw collateral pledged under this chapter by substituting other eligible collateral of at least equal market value. Any qualified public depository that withdraws or substitutes collateral or custodian that permits withdrawal or substitution of collateral in violation of this chapter shall be subject to the penalties provided in subdivision (3) of subsection (e) of Section 41-14A-7.

(g) A custodian holding collateral under this chapter shall hold such collateral for the benefit of the Loss Payment Fund. The security interest of the Loss Payment Fund in collateral placed with a custodian shall be deemed automatically perfected under the provisions of Articles 8 and 9 of Title 7, as of the date of the acceptance of the deposit of the collateral with the custodian or any subagent of the custodian without the necessity of further action on the part of the Loss Payment Fund. Prior to a default by a qualified public depository and the institution of action by the State Treasurer to enforce the security interest of the Loss Payment Fund under this chapter, the qualified public depository shall not be deemed to have transferred ownership of any pledged collateral to the State Treasurer or the Loss Payment Fund but the qualified public depository's ownership of the pledged collateral shall be subject to a valid and enforceable lien and security interest in favor of the Loss Payment Fund. Any sale pursuant to the provisions of this chapter by the State Treasurer of any collateral pledged to the Loss Payment Fund shall, when the sale is made and the purchase price paid, have the effect of transferring to and vesting in the purchaser of such sale title to the said bonds or other securities comprising such collateral and as authorizing the said purchaser to have the bonds or other securities so purchased registered in the name of the purchaser or its nominee.

*(Act 2000-748, p. 1669, §1.)*

**Section 41-14A-6**

**Establishment of SAFE board of directors; powers and duties of the board of directors.**

(a) There is hereby established a Board of Directors of the SAFE Program charged with responsibility and authority to assess and manage the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors. In exercising its powers and performing its responsibilities, the board of directors shall constitute a body politic under the laws of the state performing the public function of assuring the safety of public deposits.

(b) The State Treasurer shall be a permanent, standing, voting member of the board of directors and shall serve as its chair. The Superintendent of Banks shall be a permanent, standing, non-voting member of the board of directors. The remaining six members shall each possess knowledge, skill, and experience in one or more of the following areas:

- (1) Financial analysis.
- (2) Trend analysis.
- (3) Accounting.
- (4) Banking.
- (5) Risk management.
- (6) Investment management.



The remaining six members shall be comprised of four members each of whom shall be a representative of an active qualified public depository, which is not in the process of withdrawing from the SAFE Program and which is in compliance with all applicable rules, regulations, and reporting requirements of this chapter, one of whom will be selected and approved by the State Treasurer and three of whom shall be selected and approved by the State Treasurer from three or more nominations submitted by the Alabama Bankers Association (or any successor association or entity, or, if no such association or successor association or entity shall then exist, submitted by the Superintendent of Banks); one member who shall be a representative of a municipality within the state and who will be selected and approved by the State Treasurer from one or more nominations submitted to the State Treasurer by the League of Municipalities of Alabama; and one member who shall be a representative of a county within the state and who will be selected and approved by the State Treasurer from one or more nominations submitted to the State Treasurer by the Association of County Commissions of Alabama. The terms of the members of the board of directors other than the State Treasurer and the Superintendent of Banks shall be four years, except that, with respect to the initial appointments, as determined by the State Treasurer, one member will serve one year, one member will serve two years, two members will serve three years, and two members will serve four years. Any person appointed to fill a vacancy on the board may serve only for the remainder of the unexpired term. Any member is eligible for reappointment and shall serve until a successor is selected. The chair shall annually designate a member of the board of directors to serve as vice chair, and a secretary who need not be a member of the board of directors. The secretary shall keep a record of the proceedings of the board of directors and shall be the custodian of all printed materials filed with or by the board. Notwithstanding the existence of vacancies on the board of directors, two thirds of the voting members then serving shall constitute a quorum. The board of directors may not take official action in the absence of a quorum. The board of directors shall meet quarterly and at other times deemed necessary to assess and manage the operations of the SAFE Program. Meetings of the board of directors, including meetings at which administrative fines and penalties are established, shall be subject to the provisions of Section 13A-14-2, as amended, the Sunshine Law, except that sessions at which any information that is confidential under the provisions of subsection (f) below shall not be subject to Section 13A-14-2, and shall not be open to the public.

(c) In adopting, amending or repealing any rule, regulation, standard, or statement of general applicability, the board of directors shall be subject to the applicable requirements of the Alabama Administrative Procedure Act, Chapter 22 of this title.

(d) In connection with the assessment and management of the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors, the board of directors shall be authorized to exercise the following powers:

(1) Designate financial institutions as qualified public depositories and require such collateral, or increase the collateral-pledging level, of any qualified public depository as may be necessary to administer the provisions of this chapter and to ensure the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors.

(2) Establish guidelines for accepting, or for reducing the reported value of, collateral as circumstances may require in order to ensure the pledging of sufficient marketable collateral to meet the purposes of this chapter.

(3) Authorize the State Treasurer to issue suspensions, disqualifications, administrative penalties, and cease and desist orders in accordance with Section 41-14A-7 against any qualified public depository that has violated any of the provisions of this chapter or any rules, regulations, or orders of the board of directors or the State Treasurer adopted under this chapter.

(4) Take such actions as the board of directors shall consider to be necessary, appropriate, or desirable in order to assess and manage the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors, including, without limitation:

a. Establish procedures for the verification of the reports of any qualified public depository relating to public deposits it holds when necessary to ensure the availability of adequate funds to pay any potential losses to public depositors.

b. Establish criteria, based on the overall financial condition of the participants and applicants, as may be necessary, to ensure the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors.

c. Establish collateral-pledging levels based on qualitative and quantitative standards.

d. Establish rules and procedures for the State Treasurer to monitor and confirm, as often as deemed necessary by the State Treasurer, the pledged collateral held by custodians.

e. Set requirements for the filing by qualified public depositories, custodians, the State Treasurer, the board's agents and contractors, and other persons of such documents, reports, records, or other information deemed necessary by the board of directors to monitor the sufficiency of the collateral pool and the SAFE Program to provide adequate protection from losses to public depositors, including, without limitation:

1. Require reports of each qualified public depository to reflect the net average monthly balance of the public deposits held by the qualified public depository and to reflect the collateral pledged by qualified public depositories under this chapter, which reports shall not be required more frequently than monthly except in the case of any qualified public depository that is then subject to default or insolvency or is the subject of an order of suspension or disqualification or a cease and desist order issued by the State Treasurer.

2. Require the submission of copies of quarterly or annual financial and regulatory reports of qualified public depositories.

f. Direct the State Treasurer to maintain perpetual inventory of pledged collateral.

g. Perform, or direct the State Treasurer to perform, financial analysis of any qualified public depository as needed.

h. Establish a minimum amount of required collateral as the board of directors deems necessary to provide for the contingent liability pool.

(5) Empower the State Treasurer to sell pledged securities, or move pledged securities to an account established in the Loss Payment Fund's name, for the purpose of paying losses to public depositors not covered by deposit insurance or to perfect the Loss Payment Fund's interest in the pledged securities.

(6) Empower the State Treasurer to transfer funds directly from any custodian to public depositors or the receiver in order to facilitate prompt payment of claims.

(7) Adopt and implement, and monitor compliance with, such standards, rules, regulations, guidelines, and orders as the board of directors shall consider to be appropriate or desirable for the purposes of maintaining the sufficiency of the collateral pool to provide adequate protection from losses to public depositors.

(8) Delegate to the State Treasurer all of the responsibility for the day-to-day administration of the SAFE Program and of the standards, rules, regulations, guidelines, and orders adopted by the board of directors, as deemed appropriate or desirable by the board of directors.

(9) Establish the conditions under which entities resulting from mergers, consolidations, sales of assets and similar transactions involving qualified public depositories will succeed qualified public depositories and assume the former institution's contingent liability agreement under Section 41-14A-8, and to prescribe requirements for notification by qualified public depositories to the board of mergers, consolidations, sales of assets, changes of address, changes of name, and similar matters.

(10) Establish the conditions under which qualified public depositories will be required to involuntarily withdraw from participation in the program and for the conditions under which collateral pledged by withdrawing qualified public depositories will be released.

(11) Authorize the filing of any information or forms required under this chapter to be by electronic data transmission. Such filings of information or forms shall have the same force and effect as a signed writing.

(e) The board of directors shall adopt rules or regulations empowering the State Treasurer to impose requirements on qualified public depositories to ensure that applicable accounts maintained by covered public entities and covered public officials are adequately identified as public deposits covered by this chapter and that each qualified public depository can identify on its records the name, address, and federal employer identification number of the covered public entities and covered public officials maintaining public deposits in such qualified public depository. The State Treasurer may require that each qualified public depository shall provide an annual statement to each public depositor then maintaining public deposits with the qualified

public depository summarizing the balances of public deposits held by the qualified public depository for the public depositor. The balances reflected in any such annual statement provided by a qualified public depository shall be deemed correct unless the public depositor notifies the qualified public depository to the contrary within 60 days of receipt of the statement.

(f) Any information contained in a report of a financial institution provided to the board of directors or the State Treasurer under this chapter shall, if made confidential by any law of the United States or of this state and if the board is notified by the financial institution of such confidentiality, be considered confidential and exempt from the provisions of Section 36-12-40, and not subject to dissemination to anyone other than the board of directors and the State Treasurer under the provisions of this chapter.

(g) Members of the board of directors shall serve without compensation, but shall be reimbursed for each day's official duties of the board of directors at the same per diem and travel rate as is paid employees of the state.

(h) Neither the board of directors nor the State Treasurer shall have the authority to assess, charge, or collect any of the costs associated with the implementation, administration, or enforcement of the SAFE Program against any covered public entities, covered public officials, or qualified public depositories, provided, however, that this subsection shall not limit or restrict the authority of the board or the State Treasurer, as applicable, to impose administrative penalties or order restitution pursuant to Section 41-14A-7 or to make assessments against qualified public depositories for losses in accordance with Section 41-14A-9.

*(Act 2000-748, p. 1669, §1.)*

#### Section 41-14A-7

#### **Disciplinary actions against qualified public depositories for violations of this chapter.**

(a) The board of directors shall have the authority to establish by rule or regulation conditions and procedures under which qualified public depositories may be suspended or disqualified and assessed administrative penalties in lieu of suspension or disqualification for violations of this chapter or violations of the board's standards, rules, regulations, and orders pursuant to this chapter. The State Treasurer shall have the authority to require that qualified public depositories violating this chapter or any of the board's standards, rules, regulations, and orders make restitution, with interest at the legal rate, for losses of public depositors or to the Loss Payment Fund, and to issue cease and desist orders against any qualified public depository violating or believed to be violating any provisions of this chapter or any of the board of directors' or the State Treasurer's standards, rules, regulations, and orders pursuant to this chapter and to impose administrative penalties against any qualified public depository violating any cease and desist order issued by the State Treasurer.

(b) The suspension or disqualification of a financial institution as a qualified public depository shall be by order of the State Treasurer, and such order shall be mailed to the qualified public depository by registered or certified mail. Within the time and in the manner specified in the order of suspension or disqualification, the financial institution shall provide to the State

Treasurer a report listing the names and addresses of each public depositor having public deposits with the financial institution and such other relevant information as the State Treasurer may request, and the State Treasurer shall provide for the prompt notification to each public depositor having public deposits with a suspended or disqualified financial institution of any such suspension or disqualification.

(c) The procedures for suspension or disqualification shall be as set forth in Chapter 22 of this title, and in the rules of the board of directors adopted pursuant to this chapter.

(d) Whenever the State Treasurer determines that an immediate danger to the public health, safety, or welfare exists, the board may take any appropriate action that may be available under the provisions of Chapter 22 of this title.

(e) If the State Treasurer finds that one or more grounds exist for the suspension or disqualification of a qualified public depository, the State Treasurer, in lieu of such suspension or disqualification, may impose an administrative penalty upon the qualified public depository as follows:

(1) With respect to any nonwillful violation, such penalty, exclusive of any restitution found to be due, may not exceed two hundred fifty dollars (\$250) for each violation. Each day a violation continues constitutes a separate violation; provided, however, that the maximum aggregate penalty for any continuing violation under this subdivision shall be five thousand dollars (\$5,000) irrespective of the number of days the violation continues prior to the assessment of the penalty.

(2) With respect to any knowing and willful violation of a lawful order or rule, including, without limitation, the failure to make restitution in accordance with a lawful order of the State Treasurer following notification to the qualified public depository, the State Treasurer may impose a penalty upon the qualified public depository in an amount not exceeding two thousand five hundred dollars (\$2,500) for each violation. Each day a violation continues constitutes a separate violation; provided, however, that the maximum aggregate penalty for any single continuing violation under this subdivision shall be twenty thousand dollars (\$20,000) irrespective of the number of days the violation continues prior to the assessment of the penalty.

(3) A qualified public depository or custodian that violates subsection (f) of Section 41-14A-5 is subject to an administrative penalty in an amount not exceeding the greater of two thousand five hundred dollars (\$2,500) or 10 percent of the amount of withdrawal, not exceeding twenty thousand dollars (\$20,000) in the aggregate.

(4) If any qualified public depository or other financial institution violates a cease and desist order, the State Treasurer may, in addition to suspending or disqualifying the qualified public depository, impose an administrative penalty in an amount not exceeding two thousand five hundred dollars (\$2,500) for each violation. Each day a violation continues constitutes a separate violation; provided, however, that the maximum aggregate penalty for any single continuing violation under this subdivision shall be twenty thousand dollars (\$20,000) irrespective of the number of days the violation continues prior to the assessment of the penalty.

(f) Any suspension shall be for the period established by the board in the order of suspension, not to exceed a period of six months. During the period of suspension of any qualified public depository, the contingent liability, required collateral, and reporting requirements of the suspended public depository remain in force under the same conditions as if the suspended depository had remained qualified. Upon expiration of the suspension period, the suspended qualified public depository may, by order of the State Treasurer, be reinstated as a qualified public depository if the State Treasurer finds that the financial institution has corrected the conditions that resulted in suspension and otherwise is in compliance with all provisions of this chapter and of the board's standards, rules, regulations, and orders.

(g) Except as may otherwise be provided by the board of directors by rule or regulation, any qualified public depository which has been disqualified may not reapply for qualification until after the expiration of one year from the date of the final order of disqualification or the final disposition of any appeal taken therefrom. During the period of disqualification, the contingent liability, required collateral, and reporting requirements of the disqualified public depository remain in force under the same conditions as if the disqualified depository had remained qualified. A qualified public depository that has been disqualified shall not receive or retain public deposits after the effective date of disqualification. The State Treasurer shall, upon request, return to the disqualified public depository that portion of the collateral pledged that is in excess of the required collateral applicable to the disqualified public depository.

*(Act 2000-748, p. 1669, §1.)*

#### **Section 41-14A-8**

#### **Contingent liability.**

Every qualified public depository that is solvent shall guarantee public depositors against loss caused by the default or insolvency of other qualified public depositories according to the terms of this chapter and shall enter into an agreement of contingent liability with the State Treasurer on behalf of the Loss Payment Fund, which agreement shall be in a form which is prescribed or approved by the board of directors, and which, when executed, shall become a part of the official records of the SAFE Program. The qualified public depository shall submit to the State Treasurer evidence that the depository's contingent liability agreement has been approved by the board of directors or other governing body of the qualified public depository and shall become a part of the official records of the qualified public depository.

*(Act 2000-748, p. 1669, §1.)*

#### **Section 41-14A-9**

#### **Procedures for payment of losses.**

(a) When the State Treasurer becomes aware that a default or insolvency has occurred, the State Treasurer shall provide notice as required in subsection (b) and implement the following procedures:

(1) The State Treasurer shall obtain information from the Superintendent of Banks of the State Banking Department or the receiver of the qualified public depository in default in order to ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits.

(2) The potential loss to public depositors shall be calculated by compiling claims received from public depositors. The State Treasurer shall validate claims of public depositors who filed claims under subsection (b) and which have been confirmed under subdivision (1).

(3) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit insurance and then through the sale of securities pledged by the defaulting depository. If the loss to public depositors is not covered by insurance or the proceeds of the sale, coverage of the remaining loss shall be provided by assessment against the other qualified public depositories following the expiration of the 120-day period for the filing of claims by public depositors. However, if the sale of securities cannot be accomplished within seven days following the expiration of the 120-day period for the filing of claims by public depositors, the State Treasurer may proceed with the assessment for qualified public depositories. The assessment for each qualified public depository shall be determined by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public depository during the previous 12 months or, in the event a qualified public depository shall have participated in the program for less than 12 months, the qualified public depository's average monthly balance for the month or months during which the qualified public depository shall have held any public deposits, divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding those of the defaulting or insolvent depository, during the same period.

(4) Each qualified public depository shall pay its assessment to the State Treasurer for deposit to the Loss Payment Fund within seven business days after it receives notice of the assessment. If a depository fails to pay its assessment when due, the State Treasurer shall satisfy the assessment by selling securities pledged by that depository.

(5) The State Treasurer shall distribute the funds to the public depositors of the qualified public depository in default according to their validated claims. At the discretion of the State Treasurer, the State Treasurer may make partial payments to public depositors that have experienced a loss of public funds which is critical to the immediate operations of the public entity.

(6) Public depositors receiving payment under the provisions of this section shall assign to the Loss Payment Fund any interest they may have in funds that may subsequently be made available to the qualified public depository in default. If the qualified public depository in default or its receiver provides the funds to the State Treasurer for the account of the Loss Payment Fund, the State Treasurer shall distribute the funds, plus all accrued interest which has accumulated from the investment of the funds, if any, to the depositories which paid assessments on the same pro rata basis as the assessments were paid. If the board of directors deems it prudent to do so, the board of directors may authorize the State Treasurer to enforce any or all claims, or take any other action, against a defaulting or insolvent qualified public depository or

third party to recover all or part of any losses to any public depositor or assessments against any other qualified public depositories. Action or inaction by the board of directors or the State Treasurer will not impair the rights that any public depositor or qualified public depository may have against a defaulting or insolvent qualified public depository or any third party.

(7) Expenses incurred by the board of directors, the State Treasurer, or their agents in connection with a default or insolvency that is not normally incurred in the administration of the SAFE Program shall be paid out of the proceeds from the sale of the pledged collateral.

(b) Upon determining the default or insolvency of a qualified public depository, the State Treasurer shall provide notice of such default or insolvency to all public depositors of such qualified public depository the identity of which is reflected in the board's or the qualified public depository's records, "known public depositors," which notice, the "first notice," shall be provided by certified or registered mail to the last address for each such public depositor reflected in the qualified public depository's records and shall specify that public depositors having claims or demands against the funds occasioned by the default or insolvency must file their claims with the State Treasurer within 120 days after the date of the notice. In the case of any known public depositor which has not filed a claim with the State Treasurer within 45 days after the date of the first notice, the State Treasurer shall mail a second notice, the "second notice," by certified or registered mail to the last address for such known public depositor reflected in the qualified public depository's records, which second notice shall specify the date by which claims must be filed with the State Treasurer. The second notice shall be mailed by the State Treasurer not more than 55 days after the date of the first notice. Contemporaneously with the mailing of the first notice and the second notice, the State Treasurer shall provide to the judge of probate of each county of the state and publish in a newspaper of general circulation a notice, which notice shall identify the defaulted or insolvent qualified public depository, the date before which public depositors must file claims with the State Treasurer under this chapter, and requesting that the judge of probate provide copies of such notice to each covered public entity within the judge of probate's county. The judge of probate of the various counties of this state shall promptly endeavor to provide copies of said notices to each covered public entity in the judge of probate's county which is known to the judge of probate, but in no event shall the judge of probate be liable for the failure of any covered public entity to receive copies of said notices.

(c) No claim against the Loss Payment Fund is binding on the State Treasurer or the Loss Payment Fund unless presented within 120 days after the date of the first notice.

(d) Nothing contained in this chapter shall affect any proceeding to:

(1) Enforce any real property mortgage, chattel mortgage, security interest, or other lien on property of a qualified public depository that is in default or insolvency.

(2) Establish liability of a qualified public depository that is in default or insolvency to the limits of any federal or other casualty insurance protection.

*(Act 2000-748, p. 1669, §1.)*

**Section 41-14A-10**



### **SAFE Loss Payment Fund.**

(a) In order to facilitate the administration of this chapter, there is created the SAFE Loss Payment Fund, which shall be held and administered by the State Treasurer, for the account of the SAFE Program, separate and apart from the State General Fund. The proceeds from the sale of securities pledged as collateral or from any assessment pursuant to Section 41-14A-9 shall be deposited into the Loss Payment Fund. The amounts on deposit in the Loss Payment Fund shall be disbursed as necessary in accordance with the provisions of this chapter in order to pay losses to public depositors and for such other purposes as may be expressly provided for in this chapter.

(b) The State Treasurer is authorized to pay any losses to public depositors from the Loss Payment Fund. The term "losses," for purposes of this chapter, shall also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by applicable federal laws or regulations because of suspension or disqualification of a qualified public depository by the State Treasurer under the authority granted in this chapter or because of withdrawal from the SAFE Program in accordance with rules or regulations adopted by the board of directors pursuant to this chapter. In that event, the State Treasurer is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provisions of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that amount over to the public depositor as reimbursement for such loss. Any money in the Loss Payment Fund estimated not to be needed for immediate cash requirements shall be invested in any securities or other investments selected by the State Treasurer that are permitted under Section 41-14-30. All interest and other earnings from the investment of assets of the Loss Payment Fund shall accrue to the Loss Payment Fund.

*(Act 2000-748, p. 1669, §1.)*

### **Section 41-14A-11**

#### **Liability of public depositors and the state.**

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

(b) Under no circumstance shall this state, or any state agency or any covered public entity, be liable for all or any portion of any loss resulting from the default or insolvency of a qualified public depository.

*(Act 2000-748, p. 1669, §1.)*

### **Section 41-14A-12**

#### **Disposition of funds.**

(a) The amounts in the State Treasury Operations Fund shall be applied and disbursed by the State Treasurer to pay the costs and expenses of administering the SAFE Program, and to pay the members of the board of directors the per diem and travel rates permitted by Section 41-14A-6(g).

(b) Any unobligated amounts remaining in the SAFE Program Administration Fund after September 30, 2013, shall be transferred to the State Treasury Operations Fund.

*(Act 2000-748, p. 1669, §1; Act 2013-92, p. 203, §2.)*

#### **Section 41-14A-13**

#### **Establishment of Program Enforcement Fund.**

There is hereby created a SAFE Program Enforcement Fund, which shall be held and administered by the State Treasurer. There shall be paid into the Program Enforcement Fund all administrative penalties collected under this chapter. The amounts in the Program Enforcement Fund shall be applied and disbursed by the State Treasurer to pay the costs and expenses of enforcing the requirements and provisions of this chapter, including the costs of foreclosing on pledged collateral, of making and collecting assessments from qualified public depositories, and of enforcing the obligations of qualified public depositories under contingent liability agreements. Any money in the Program Enforcement Fund estimated not to be needed for immediate cash requirements shall be invested in any securities or other investments selected by the State Treasurer that are permitted under Section 41-14-30. All interest and other earnings from the investment of assets of the Program Enforcement Fund shall accrue to the Program Enforcement Fund.

*(Act 2000-748, p. 1669, §1.)*

#### **Section 41-14A-14**

#### **Audit by Examiner of Public Accounts.**

The SAFE Program shall be audited annually by the Examiners of Public Accounts to ensure that collateral is being maintained to secure public deposits in amounts that are consistent with the requirements of this chapter. The Program Enforcement Fund shall also be audited annually by the Examiners of Public Accounts.

*(Act 2000-748, p. 1669, §1; Act 2013-92, p. 203, §2.)*