

By Mr. Cohen of Newton, petition of David B. Cohen for legislation to establish a Massachusetts security for public deposits commission. Banks and Banking.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

AN ACT ESTABLISHING THE MASSACHUSETTS SECURITY FOR PUBLIC DEPOSITS COMMISSION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by
2 inserting after chapter twenty-nine C the following chapter:—

3 CHAPTER 29D
4 MASSACHUSETTS SECURITY FOR PUBLIC DEPOSITS
5 ACT.

6 Section 1. In this chapter, the following words shall have
7 the following meanings, unless the context clearly indicates
8 otherwise:

9 "Public Deposit", money of the commonwealth, cities, and
10 town, counties, districts, regional school districts, regional refuse
11 disposal districts, and housing authorities deposited in any form
12 whatsoever in any public depository or in a combined investment
13 fund.

14 "Public depository" or "depository", any financial institution
15 lawfully doing business in the commonwealth that holds public
16 deposits.

17 "Loss", issuance of an order by an appropriate regulatory
18 authority restraining a depository from making payments on deposit
19 liabilities or the appointment of a receiver for a depository.

20 "Combined investment fund", a combined investment fund
21 established under section thirty-eight A of chapter twenty-nine.

22 “Commission”, the Massachusetts security for public deposits
23 commission established under section two.

24 “Net worth”, the aggregate of capital stock, surplus, undivided
25 profits, general reserves, and all capital notes and debentures that
26 are subordinated to the interests of depositors.

27 Section 2. There is hereby established the Massachusetts secu-
28 rity for public deposits commission to consist of three persons,
29 one of whom shall be the state treasurer, who shall serve as
30 chairman ex officio, one of whom shall be the state auditor, and
31 one of whom shall be the commissioner of banks; provided,
32 however, that any member may designate another person from
33 time to time to act in his place, including the right to attend and
34 vote at a meeting of the commission. The affirmative vote of at
35 least two members shall be necessary for any action taken by the
36 commission. The members shall be reimbursed for their necessary
37 expenses incurred in the performance of their duties.

38 Section 3. The commission shall have the power:

39 (a) to make and enforce regulations necessary and proper for
40 the full and complete performance of it's functions tender this
41 chapter;

42 (b) to require any depository to furnish such information as the
43 commission shall request;

44 (c) to take such action as it deems best for the protection,
45 collection, compromise, or settlement of any claim arising in the
46 case of a loss;

47 (d) to prescribe regulations, subject to this chapter, fixing the
48 requirements for qualifications of banks as depositories and fixing
49 other terms and conditions consistent with this chapter under
50 which public deposits may be received and held; and

51 (e) to fix the official date that all public deposits shall be
52 protected against loss as provided in this chapter.

53 Any depository refusing or neglecting to give any information
54 requested under clause (b) shall no longer be a public depository
55 and shall be excluded from receiving public deposits until such
56 time as the information requested is furnished and deemed accept-
57 able by the commission.

58 Section 4. All public deposits shall be secured as provided in
59 this chapter. No depository or combined investment fund shall
60 accept public deposits, unless qualified to do so by the commis-
61 sion. The commission shall publish a list of qualified depositories
62 periodically, but not less often than quarterly.

63 Section 5. The commission shall promulgate regulations
64 requiring that depositories deposit collateral securities or other-
65 wise insure or secure public deposits as required by this chapter.
66 Financial institutions and any combined investment fund that
67 insure or otherwise secure public deposits, other than by the
68 deposit of collateral securities, shall furnish evidence of the ade-
69 quacy of the insurance or other deposit security for the commis-
70 sion. The commission shall adopt rules and regulations regarding
71 the acceptance of said insurance or other security in lieu of
72 collateral.

73 Section 6. The amount of collateral, insurance, or other
74 security of public deposits shall be established by rules and regu-
75 lations of the commission consistent with the provisions of this
76 chapter. The criteria established by such rules and regulations
77 shall include, among others, the capital asset ratios of each
78 depository. The commission shall periodically determine a
79 minimum ratio for collateral, insurance, or other security for
80 depositories and combined investment funds that accept public
81 deposits.

82 Section 7. For the purposes of securing public deposits, the
83 following securities are eligible:

84 (a) obligations of the United States government, its agencies,
85 and instrumentalities;

86 (b) obligations of the commonwealth, its agencies, political
87 subdivisions, and other public units;

88 (c) other marketable securities and debt instruments determined
89 by the commission to be satisfactory to provide liquid assets in
90 the event of a depository default, or insolvency;

91 (d) one to four family residential mortgage loans in a bank's
92 portfolio; or

93 (e) such insurance, letters or lines of credit, or other security as
94 shall be determined by the commission to be satisfactory to pro-
95 vide liquid assets in the event of a default or insolvency of a
96 depository or combined investment fund.

97 Section 8. A depository may substitute different forms of
98 collateral provided that the substituted collateral meets the
99 requirements of this chapter.

101 Section 9. The commission shall require additional collateral or
102 other security from individual depositories, including, but not
103 limited to, the following instances:

104 (a) when public deposits in a depository exceed three hundred
105 percent of its net worth;

106 (b) the aggregate amount of public deposits in the depository
107 exceeds thirty percent of the aggregate amount of public deposits
108 in all depositories, as determined by the commission;

109 (c) the depository has a cease and desist order placed upon it
110 by an appropriate regulatory agency;

111 (d) the depository has accepted public deposits for fewer than
112 two years.

113 Section 10. On a monthly basis, each depository shall submit to
114 the commission the market value of all collateral securities. The
115 commission shall adopt rules and regulations to provide for the
116 valuation of collateral, in the event that market value is not
117 readily determinable.

118 Section 11. Depositories shall place all required collateral
119 securities in a restricted account at the Federal Reserve Bank,
120 Federal Home Loan Bank, or with a bank having trust powers.
121 The depository shall deliver to the commission a power of
122 attorney authorizing the commission to transfer or liquidate these
123 securities in the event of a default, financial failure, or insolvency
124 of a depository.

125 Section 12. In the event of a default or insolvency of a deposi-
126 tory, the commission shall implement the following procedures:

127 (a) fix the official date on which a loss occurs, taking into con-
128 sideration the orders, rules, and regulations of the appropriate reg-
129 ulatory authority as they affect the failure or inability of a deposi-
130 tory to repay public deposits in full;

131 (b) in cooperation with the appropriate regulatory authorities,
132 the commission shall ascertain the amount of public funds on
133 deposit at the defaulting institution and the amount of deposit
134 insurance or other security applicable to such deposits;

135 (c) the potential loss to public depositors shall be calculated by
136 compiling claims from such deposits. Such claims shall be
137 validated. The loss to public depositors shall be satisfied, insofar
138 as possible, first through any applicable deposit insurance or other
139 security and then through the sale of securities pledged by the
140 defaulting depository institution.

141 Section 13. A public officer lawfully, in good faith, and in the
142 exercise of due care making a public deposit in accordance with
143 this chapter shall not be personally liable for any loss of money

144 resulting from the default or insolvency of a public depository or
145 a combined investment fund.

146 Section 14. A committee shall be established to meet annually
147 with the commission or its designees. The committee shall consist
148 of the following persons: a designee from the Massachusetts
149 Bankers Association and the Executive Secretary and three
150 designees of the Massachusetts Collectors and Treasurers Associ-
151 ation. The Executive Secretary of the Collectors and Treasurers
152 Association shall annually notify the commission of the com-
153 mittee members and shall request the convening of the annual
154 meeting.

