

12C.23A Payment of losses in a bank.

1. The acceptance of public funds by a bank pursuant to this chapter constitutes 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.
- e. Consent to the jurisdiction and authority of the superintendent as provided under section 12C.29.

2. A bank is liable for payment if the bank fails to pay a check, draft, or warrant drawn by a public funds depositor or to account for a check, draft, warrant, order, or certificate of deposit, or any public funds entrusted to the bank if, in failing to pay, the bank acts contrary to the terms of an agreement between the bank and the public 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 state or federal regulator, 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 closed bank and the amount of deposit insurance applicable to the deposits.

b. Any loss to a public funds depositor shall 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. 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 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 that is insured by federal deposit insurance.

d. If the loss of public funds is not covered by federal deposit insurance and the proceeds of the closed bank's assets 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 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. Each bank shall pay its assessment to the treasurer of state within three business days after it receives notice of assessment. For purposes of this section, when calculating uninsured public funds, a bank shall include all deposits of customers of other financial institutions as permitted by section 12B.10, subsection 7.

e. If a bank fails to pay its assessment when due, 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 a bank fails to pay its assessment when due, 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 subsection and is ordered to pay the assessment, the court shall also order that the bank pay 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.

g. Following collection of the assessments, the treasurer of state shall distribute funds to the public depositors of the 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. By receiving payment under this section, a public depositor shall be deemed to have assigned to the treasurer of state any 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 closed bank.

99 Acts, ch 117, §12, 15; 99 Acts, ch 208, §44, 45, 74; 2002 Acts, ch 1096, §9, 17; 2003 Acts, ch 44, §7; 2004 Acts, ch 1080, §4 – 7; 2006 Acts, ch 1023, §6; 2010 Acts, ch 1028, §3, 14