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COMMITTEE REPORT

April 19, 2012

**H. 5080**

Introduced by Reps. Mack and Sandifer

S. Printed 4/19/12--H.

Read the first time March 27, 2012.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 5080) to amend Section 34‑13‑50, as amended, Code of Laws of South Carolina, 1976, relating to the total liabilities of any one borrower to a bank, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

WILLIAM E. SANDIFER for Committee.

**A** **BILL**

TO AMEND SECTION 34‑13‑50, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TOTAL LIABILITIES OF ANY ONE BORROWER TO A BANK, SO AS TO DEFINE “TOTAL LIABILITIES” WHICH SHALL INCLUDE “DERIVATIVE TRANSACTIONS” AND TO ALSO DEFINE “DERIVATIVE TRANSACTIONS” FOR THIS PURPOSE; AND TO AMEND SECTION 34‑13‑70, RELATING TO THE MAXIMUM AMOUNT OF LOANS BY A STATE BANK TO A BORROWER, SO AS TO DEFINE “LOAN” WHICH SHALL INCLUDE “DERIVATIVE TRANSACTIONS”, AND TO ALSO DEFINE “DERIVATIVE TRANSACTIONS” FOR THIS PURPOSE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 34‑13‑50 of the 1976 Code, as last amended by Ac 295 of 1998, is further amended to read:

“Section 34‑13‑50. (A) The total liabilities, direct and indirect, of any one borrower to a bank, including in the liabilities of a company or firm the liabilities of its several members, may never exceed ten percent of the bank’s unimpaired capital, except by two‑thirds vote of the directors of the bank, in which case liabilities other than those of officers and directors as described in Section 34‑13‑80 may be extended to fifteen percent of the bank’s unimpaired capital. However, liabilities may be extended by an additional amount not to exceed thirty‑five percent of the unimpaired capital of the bank when the additional loans are secured by direct obligations of the United States Government or direct obligations of this State. The discount of bills of exchange drawn in good faith against existing values and the discount of commercial or business paper are not considered money borrowed.

(B) For purposes of this section, ‘unimpaired capital’ means the total of the amount of:

(1) unimpaired common stock;

(2) perpetual preferred stock;

(3) surplus;

(4) undivided profits, excluding disallowed intangibles;

(5) reserve for contingencies and other capital reserves, excluding accrued dividends on perpetual and limited life preferred stock;

(6) mandatory convertible debt;

(7) allowance for loan losses; and

(8) capital debentures or notes, convertible or otherwise, having an average original maturity of at least seven years and having been designated specifically as part of the bank’s unimpaired capital by resolution duly adopted by the board of directors of the bank.

(C) For purposes of this section, ‘total liabilities’ include any credit exposure of a bank to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.

(D) For purposes of this section, ‘derivative transaction’ means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or assets.”

SECTION 2. Section 34‑13‑70 of the 1976 Code is amended to read:

“Section 34‑13‑70. (A) In no case shall a loan be made by any State bank which when added to the then existing total loans to the borrower thereof would increase the total to more than twenty‑five per cent of the capital, surplus and deposits of the bank, less the amount invested in real estate, bonds or other securities.

(B) For purposes of this section, ‘loan’ includes any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between a bank and that borrower.

(C) For purposes of this section, ‘derivative transaction’ means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of any interest in, or any quantitative measure or the occurrence of any event relating to one or more commodities, securities, currencies, interest, or other rates, indices, or assets.”

SECTION 3. This act takes effect upon approval by the Governor.

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