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COMMITTEE REPORT

May 27, 2015

**S. 693**

Introduced by Senator Hayes

S. Printed 5/27/15--S. [SEC 5/28/15 11:30 AM]

Read the first time April 21, 2015.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 693) to amend the Code of Laws of South Carolina, 1976, by adding Section 38‑27‑475 so as to revise the Insurers’ Rehabilitation and Liquidation Act by adding provisions, etc., respectfully

**REPORT:**

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

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 38‑27‑475 SO AS TO REVISE THE INSURERS’ REHABILITATION AND LIQUIDATION ACT BY ADDING PROVISIONS SPECIFIC TO FEDERAL HOME LOAN BANKS AND INSURER‑MEMBERS OF THOSE BANKS IN DELINQUENCY PROCEEDINGS BROUGHT PURSUANT TO THE ACT; TO AMEND SECTION 38‑27‑50, RELATING TO DEFINITIONS CONCERNING THE ACT SO AS TO DEFINE ADDITIONAL TERMS; AND TO AMEND SECTION 38‑27‑70, RELATING TO INJUNCTIONS AND OTHER EQUITABLE REMEDIES AVAILABLE TO RECEIVERS APPOINTED IN DELINQUENCY PROCEEDINGS UNDER THE ACT, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH FEDERAL HOME LOAN BANKS MAY EXERCISE THEIR RIGHTS REGARDING COLLATERAL PLEDGED BY ITS INSURER‑MEMBERS INVOLVED IN DELINQUENCY PROCEEDINGS BROUGHT PURSUANT TO THE ACT.

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

SECTION 1. Article 5, Chapter 27, Title 38 of the 1976 Code is amended by adding:

“Section 38‑27‑475. (A) Notwithstanding any other provision of this chapter to the contrary, the receiver for an insurer‑member shall not void any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement, or any pledge, security, collateral, or guarantee agreement, or any other similar arrangement or credit enhancement relating to a federal home loan bank security agreement made in the ordinary course of business and in compliance with the applicable federal home loan bank agreement. The receiver also may not void a redemption or repurchase of any stock or equity securities made by the federal home loan bank within four months of the commencement of the delinquency proceedings or which received prior approval of the receiver. However, a transfer is voidable if the transfer is made with the actual intent to hinder, delay, or defraud the insurer‑member, existing creditors, or future creditors.

(B) If a federal home loan bank exercises its rights regarding collateral pledged by an insurer‑member who is subject to a delinquency proceeding, the federal home loan bank shall repurchase any outstanding capital stock that is in excess of that amount of federal home loan bank stock that the insurer‑member is required to hold as a minimum investment, to the extent the federal home loan bank in good faith determines the repurchase to be permissible under applicable laws, regulations, regulatory obligations, and the federal home loan bank’s capital plan, and consistent with the federal home loan bank’s current capital stock practices applicable to its entire membership.

(C) Following the appointment of a receiver for an insurer‑member, the federal home loan bank shall, within ten business days after a request from the receiver is made, provide a process and establish timelines for the:

(1) release of collateral that exceeds the lendable collateral value, as determined pursuant to the advance agreement with the federal home loan bank, required to support secured obligations remaining after any repayment of advances;

(2) release of any of the insurer‑member’s collateral remaining in the federal home loan bank’s possession following full repayment of all outstanding secured obligations of the insurer‑member in full;

(3) payment of fees owed by the insurer‑member and the operation of deposits and other accounts of the insurer‑member with the federal home loan bank; and

(4) possible redemption or repurchase of federal home loan bank stock or excess stock of any class that an insurer‑member is required to own.

(D) Upon request from the receiver for an insurer‑member, the federal home loan bank shall provide any available options that an insurer‑member may exercise to renew or restructure an advance to defer associated prepayment fees, subject to:

(1) market conditions;

(2) the terms of the advances outstanding to the insurer‑member;

(3) the applicable policies of the federal home loan bank; and

(4) the compliance of the Federal Home Loan Bank with the Federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq., and corresponding regulations.

(E) Nothing in this section affects the rights of a receiver regarding advances to an insurer‑member in delinquency proceedings pursuant to 12 C.F.R. Section 1266.4.

(F) The provisions of this section apply notwithstanding another provision of this chapter.”

SECTION 2. Section 38‑27‑50 of the 1976 Code is amended to read:

“Section 38‑27‑50. (1) ‘Ancillary state’ means any state other than a domiciliary state.

(2) ‘Creditor’ is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.

(3)(a) ‘Delinquency proceeding’ means a proceeding instituted against an insurer to liquidate, rehabilitate, reorganize, or conserve the insurer and a summary proceeding under Section 38‑27‑220. (b) ‘Formal delinquency proceeding’ means a liquidation or rehabilitation proceeding.

(4) ‘Doing business’ includes any of the following acts, whether effected by mail or otherwise:

(a) the issuance or delivery of contracts of insurance to persons resident in this State;

(b) the solicitation of applications for such contracts or other negotiations preliminary to the execution of such contracts;

(c) the collection of premiums, membership fees, assessments, or other consideration for such contracts;

(d) the transaction of matters subsequent to execution of such contracts and arising out of them; or

(e) operating under a license or certificate of authority, as an insurer, issued by the director or his designee.

(5) ‘Domiciliary state’ means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.

(6) ‘Fair consideration’ is given for property or obligation:

(a) when in exchange for the property or obligation, as a fair equivalent therefor and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or

(b) when the property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(7) ‘Federal home loan bank’ or ‘FHLB’ means a federal home loan bank established pursuant to the Federal Home Loan Bank Act, 12 U.S.C. Section 1421, et seq.

(~~7~~8) ‘Foreign country’ means any other jurisdiction not in any state.

(~~8~~9) ‘General assets’ means all property, real, personal, or otherwise, not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, ‘general assets’ includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, are treated as general assets.

(~~9~~10) ‘Guaranty association’ means the South Carolina Property and Casualty Insurance Guaranty Association, the South Carolina Life and Accident and Health Insurance Guaranty Association, and any other similar entity created by the legislature of this State for the payment of claims of insolvent insurers. ‘Foreign guaranty association’ means any similar entity created by the legislature of any other state.

(~~10~~11) ‘Insolvency’ or ‘insolvent’ means:

(a) For an insurer issuing only assessable fire insurance policies:

(i) the inability to pay any obligation within thirty days after it becomes payable~~,~~; or

(ii) if an assessment is made within thirty days after that date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss.

(b) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of:

(i) any capital and surplus required by law for its organization, or

(ii) the total par or stated value of its authorized and issued capital stock.

(c) For purposes of this item ~~(10)~~, ‘liabilities’ includes, but is not limited to, reserves required by statute, regulations, or specific requirements imposed by the director or his designee upon a subject company at the time of admission or subsequent thereto.

(~~11~~12) ‘Insurer’ means any person who has done, purports to do, is doing, or is licensed to do an insurance business and is or has been subject to the authority of, or to liquidation, rehabilitation, reorganization, supervision, or conservation by, the commissioner of insurance, or similar entity, of any state. For purposes of this chapter, any other persons included under Section 38‑27‑40 are considered insurers.

(13) ‘Insurer‑member’ means an insurer who is a member of a federal home loan bank.

(~~12~~14) ‘Person’ means natural persons, corporations, partnerships, trusts, associations, societies, orders, special purpose reinsurance vehicles, or any other organizations or entities.

(~~13~~15) ‘Preferred claim’ means any claim with respect to which the terms of this chapter accord priority of payment from the general assets of the insurer.

(~~14~~16) ‘Receiver’ means receiver, liquidator, rehabilitator, or conservator as the context requires.

(~~15~~17) ‘Reciprocal state’ means any state other than this State in which in substance and effect subsection (a) of Section 38‑27‑370, Section 38‑27‑930, Section 38‑27‑940, and Sections 38‑27‑960 through 38‑27‑980 are in force, and in which provisions are in force requiring that the director, his designee, or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.

(~~16~~18) ‘Secured claim’ means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow, or otherwise, but not including special deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process.

(~~17~~19) ‘Special deposit claim’ means any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets.

(~~18~~20) ‘State’ means any state, district, or territory of the United States and the Panama Canal Zone.

(~~19~~21) ‘Transfer’ includes the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor is considered a transfer suffered by the debtor.”

SECTION 3. Section 38‑27‑70 of the 1976 Code is amended to read:

“Section 38‑27‑70. (~~a~~A)(1) ~~Any~~ A receiver appointed in a proceeding under this chapter may at any time apply for, and ~~any~~ a court of general jurisdiction may grant, restraining orders, preliminary and permanent injunctions, and other orders considered necessary and proper to prevent:

(~~1~~a) the transaction of further business;

(~~2~~b) the transfer of property;

(~~3~~c) interference with the receiver or with a proceeding under this chapter;

(~~4~~d) waste of the insurer’s assets;

(~~5~~e) dissipation and transfer of bank accounts;

(~~6~~f) the institution or further prosecution of any actions or proceedings;

(~~7~~g) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(~~8~~h) the levying of execution against the insurer, its assets, or its policyholders;

(~~9~~i) the making of any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(~~10~~j) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(~~11~~k) any other threatened or contemplated action that might lessen the value of the insurer’s assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

(~~b~~2) The receiver may apply to any court outside of the State for the relief described in this subsection ~~(a)~~.

(B) After the seventh day following the commencement of a delinquency proceeding involving an insurer‑member domiciled in this State, the insurer‑member’s FHLB must not be stayed or prohibited from exercising its rights regarding collateral pledged by that insurer‑member. The provisions of this subsection apply notwithstanding another provision of this chapter.”

SECTION 4. This act takes effect upon approval by the Governor.

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