



# Senate

General Assembly

**File No. 391**

January Session, 2013

Substitute Senate Bill No. 1092

*Senate, April 8, 2013*

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING FEDERAL HOME LOAN BANKS AND THE INSURERS REHABILITATION AND LIQUIDATION ACT.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-907 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) The conservation, rehabilitation and liquidation of insurance  
4 companies and other persons subject to the provisions of sections 38a-  
5 903 to 38a-961, inclusive, are a matter of vital public interest and affect  
6 the relationships between insureds and their insurers.

7 (1) An application or petition under sections 38a-912, 38a-914, 38a-  
8 915, 38a-918, 38a-919 and 38a-920, shall operate as an automatic stay  
9 applicable to all persons, other than the receiver and as specified under  
10 subsection (c) of this section, which shall be permanent and survive the  
11 entry of an order of conservation, rehabilitation or liquidation, and  
12 which shall prohibit: (A) The transaction of further business; (B) the  
13 transfer of property; (C) interference with the receiver or with a

14 proceeding under said sections; (D) waste of the insurer's assets; (E)  
15 dissipation and transfer of bank accounts; (F) the institution or further  
16 prosecution of any actions or proceedings in which the insurer is a  
17 party; (G) the obtaining of preferences, judgments, attachments,  
18 garnishments, or liens against the insurer, its assets or its  
19 policyholders; (H) the levying of execution against the insurer, its  
20 assets, or its policyholders; (I) the making of any sale or deed for  
21 nonpayment of taxes or assessments that would lessen the value of the  
22 assets of the insurer; (J) the withholding from the receiver of books,  
23 accounts, documents, or other records relating to the business of the  
24 insurer; or (K) any other threatened or contemplated action that might  
25 lessen the value of the insurer's assets or prejudice the rights of  
26 policyholders, creditors, or shareholders, or the administration of any  
27 proceeding under said sections.

28 (2) Notwithstanding any other provision of law, no bond shall be  
29 required of the commissioner as a prerequisite for the issuance of any  
30 injunction or restraining order pursuant to this section.

31 (3) Upon motion of a person subject to the stay, the court, after  
32 notice to the receiver and a hearing, may modify or grant relief from  
33 the stay, provided said person shall have the burden of proof and shall  
34 establish by clear and convincing evidence that such relief should be  
35 granted.

36 (4) All matters that may be stayed, enjoined or barred under this  
37 section and all matters involving its interpretation or operation shall  
38 remain within the exclusive jurisdiction of the domiciliary receivership  
39 court.

40 (b) The receiver may apply to any court outside of the state for the  
41 relief described in subsection (a) of this section.

42 (c) Notwithstanding subsections (a) and (b) of this section or any  
43 other provision of this chapter, no person shall be stayed, enjoined or  
44 barred from exercising or enforcing any right or cause of action under  
45 any pledge, security, credit, loan, advance, reimbursement or

46 guarantee agreement or arrangement or any similar agreement or  
47 arrangement or other credit enhancement to which a Federal Home  
48 Loan Bank, as defined in 12 USC 1422, as amended from time to time,  
49 is a party.

50 Sec. 2. Section 38a-928 of the general statutes is repealed and the  
51 following is substituted in lieu thereof (*Effective October 1, 2013*):

52 (a) Every transfer made or suffered and every obligation incurred  
53 by an insurer within one year prior to the filing of a successful petition  
54 for rehabilitation or liquidation under sections 38a-903 to 38a-961,  
55 inclusive, is fraudulent as to then existing and future creditors if made  
56 or incurred without fair consideration, or with actual intent to hinder,  
57 delay, or defraud either existing or future creditors. A transfer made or  
58 an obligation incurred by an insurer ordered to be rehabilitated or  
59 liquidated under said sections, which is fraudulent under this section,  
60 may be avoided by the receiver, except as to a person who in good  
61 faith is a purchaser, lienor, or obligee for a present fair equivalent  
62 value, and except that any purchaser, lienor, or obligee, who in good  
63 faith has given a consideration less than fair for such transfer, lien, or  
64 obligation, may retain the property, lien or obligation as security for  
65 repayment. The court may, on due notice, order any such transfer or  
66 obligation to be preserved for the benefit of the estate, and in that  
67 event, the receiver shall succeed to and may enforce the rights of the  
68 purchaser, lienor [,] or obligee.

69 (b) (1) A transfer of property other than real property shall be  
70 deemed to be made or suffered when it becomes so far perfected that  
71 no subsequent lien obtainable by legal or equitable proceedings on a  
72 simple contract could become superior to the rights of the transferee  
73 under subsection (c) of section 38a-930.

74 (2) A transfer of real property shall be deemed to be made or  
75 suffered when it becomes so far perfected that no subsequent bona fide  
76 purchaser from the insurer could obtain rights superior to the rights of  
77 the transferee.

78 (3) A transfer which creates an equitable lien shall not be deemed to  
79 be perfected if there are available means by which a legal lien could be  
80 created.

81 (4) Any transfer not perfected prior to the filing of a petition for  
82 liquidation shall be deemed to be made immediately before the filing  
83 of the successful petition.

84 (5) The provisions of this subsection apply whether or not there are  
85 or were creditors who might have obtained any liens or persons who  
86 might have become bona fide purchasers.

87 (c) Any transaction of the insurer with a reinsurer shall be deemed  
88 fraudulent and may be avoided by the receiver under subsection (a) of  
89 this section if: (1) The transaction consists of the termination,  
90 adjustment, or settlement of a reinsurance contract in which the  
91 reinsurer is released from any part of its duty to pay the originally  
92 specified share of losses that had occurred prior to the time of the  
93 transaction, unless the reinsurer gives a present fair equivalent value  
94 for the release; and (2) any part of the transaction took place within  
95 one year prior to the date of filing of the petition through which the  
96 receivership was commenced.

97 (d) Any person receiving property from the insurer or any benefit  
98 thereof which is a fraudulent transfer under subsection (a) of this  
99 section shall be personally liable therefor and shall be bound to  
100 account to the liquidator.

101 (e) Notwithstanding subsections (a) to (d), inclusive, of this section  
102 or any other provision of this chapter, no receiver or any other person  
103 shall avoid any transfer or obligation that arises under or in connection  
104 with any pledge, security, credit, loan, advance, reimbursement or  
105 guarantee agreement or arrangement or any similar agreement or  
106 arrangement or other credit enhancement to which a Federal Home  
107 Loan Bank, as defined in 12 USC 1422, as amended from time to time,  
108 is a party, that is made, suffered or incurred prior to or after the filing  
109 of a successful petition for rehabilitation or liquidation under sections

110 38a-903 to 38a-961, inclusive. Such transfer or obligation may be  
111 avoided by the receiver or other person if such transfer or obligation  
112 was made, suffered or incurred with actual intent to hinder, delay or  
113 defraud the insurer, the receiver or existing or future creditors.

114 Sec. 3. Subsection (a) of section 38a-930 of the general statutes is  
115 repealed and the following is substituted in lieu thereof (*Effective*  
116 *October 1, 2013*):

117 (a) (1) A preference is a transfer of any of the property of an insurer  
118 to or for the benefit of a creditor, for or on account of an antecedent  
119 debt, made or suffered by the insurer within one year before the filing  
120 of a successful petition for liquidation under sections 38a-903 to 38a-  
121 961, inclusive, the effect of which transfer may be to enable the creditor  
122 to obtain a greater percentage of this debt than another creditor of the  
123 same class would receive. If a liquidation order is entered while the  
124 insurer is already subject to a rehabilitation order, then such transfers  
125 shall be deemed preferences if made or suffered within one year before  
126 the filing of the successful petition for rehabilitation, or within two  
127 years before the filing of the successful petition for liquidation,  
128 whichever time is shorter.

129 (2) [Any] Except as specified in subdivision (3) of this subsection,  
130 any preference may be avoided by the liquidator if: (A) The insurer  
131 was insolvent at the time of the transfer; (B) the transfer was made  
132 within four months before the filing of the petition; (C) the creditor  
133 receiving it or to be benefited thereby or his agent acting with  
134 reference thereto had, at the time when the transfer was made,  
135 reasonable cause to believe that the insurer was insolvent or was about  
136 to become insolvent; or (D) the creditor receiving it was an officer, or  
137 any employee or attorney or other person who was in fact in a position  
138 of comparable influence in the insurer to an officer whether or not he  
139 held such position, or any shareholder holding directly or indirectly  
140 more than five per centum of any class of any equity security issued by  
141 the insurer, or any other person, firm, corporation, association, or  
142 aggregation of persons with whom the insurer did not deal at arm's

143 length.

144 (3) Notwithstanding subdivision (2) of this subsection or any other  
145 provision of this chapter, no preference that arises under or in  
146 connection with any pledge, security, credit, loan, advance,  
147 reimbursement or guarantee agreement or arrangement or any similar  
148 agreement or arrangement or other credit enhancement to which a  
149 Federal Home Loan Bank, as defined in 12 USC 1422, as amended from  
150 time to time, is a party shall be avoided by the liquidator or any other  
151 person.

152 [(3)] (4) Where the preference is voidable, the liquidator may  
153 recover the property, or if it has been converted, its value from any  
154 person who has received or converted the property, except where a  
155 bona fide purchaser or lienor has given less than fair equivalent value,  
156 he shall have a lien upon the property to the extent of the  
157 consideration actually given by him. Where a preference by way of lien  
158 or security title is voidable, the court may on due notice order the lien  
159 or title to be preserved for the benefit of the estate, in which event the  
160 lien or title shall pass to the liquidator.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2013	38a-907
Sec. 2	October 1, 2013	38a-928
Sec. 3	October 1, 2013	38a-930(a)

**Statement of Legislative Commissioners:**

The title was changed.

**INS**      *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill makes several adjustments to the Insurers' Rehabilitation and Liquidation Act. As is concerns private insurance transactions, there is no fiscal impact.

***The Out Years******State Impact:*** None***Municipal Impact:*** None

**OLR Bill Analysis****sSB 1092*****AN ACT CONCERNING FEDERAL HOME LOAN BANKS AND THE INSURERS REHABILITATION AND LIQUIDATION ACT.*****SUMMARY:**

This bill modifies the Insurers Rehabilitation and Liquidation Act (IRLA) to provide certain protections to a Federal Home Loan Bank (FHL Bank) that is a party to any pledge, security, credit, loan, advance, reimbursement, or guarantee agreement with an insurance company that is under conservation, rehabilitation, liquidation, or administrative supervision by the Insurance Department (see BACKGROUND).

The bill exempts such FHL Banks from the automatic stay that an application or petition for a delinquency proceeding, rehabilitation, or liquidation order currently grants. The stay prohibits anyone from engaging in any actions that might lessen the value of an insurer's assets or prejudice the rights of policyholders, creditors, or shareholders. It becomes permanent and survives the entry of a conservation, rehabilitation, or liquidation order.

The law (1) makes every person receiving any property or benefit from an insurer through a fraudulent transfer personally liable and accountable to the liquidator and (2) allows receivers to avoid the transfer. A "fraudulent transfer" is a transfer made, within one year before the filing of a petition for rehabilitation or liquidation, without fair consideration or with actual intent to hinder, delay, or defraud creditors. The bill prohibits the avoidance of the transfer if such transfer involves an FHL Bank, regardless of when the transfer was made. But the receiver can still avoid the transfer if it was done with actual intent to hinder, delay, or defraud the receiver or creditor.

The bill also prohibits the avoidance by a liquidator of any preference to which an FHL Bank is a party. A “preference” is a transfer of property to or for the benefit of a creditor, within one year before the filing of a petition for liquidation, that enables the creditor to obtain a greater percentage of debt than another creditor of the same class.

EFFECTIVE DATE: October 1, 2013

## **BACKGROUND**

### ***Differential Treatment of Banks***

The bill may raise a constitutional problem under the equal protection clause (U.S. Const. amend. XIV, § 1 and Conn. Const. art. I, § 20). It extends certain protections to an FHL Bank that has an agreement or arrangement with an insurance company that is under rehabilitation or liquidation by the Insurance Department. The bill does not extend these protections to other types of banks that are not members of an FHL Bank that have similar agreements or arrangements with such an insurer.

### ***Insurers Rehabilitation and Liquidation Act***

The IRLA protects the interests of policyholders, claimants, creditors, and the general public in the event of an insurance company’s insolvency. It gives the insurance commissioner broad authority to monitor the financial condition of insurers and, when he believes necessary, to place them under administrative supervision or, with court approval, conservation, rehabilitation, or liquidation.

### ***Federal Home Loan Banks***

There are 12 regional FHL Banks, which were chartered by Congress in 1932. They are cooperatively structured, member-owned wholesale banks that provide members access to funding and liquidity. Insured depository institutions and insurance companies are eligible to become members in their region’s FHL Bank. The banks advance funds to its members on a collateralized, fully secured basis.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 17    Nay 0    (03/19/2013)