
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)