



General Assembly

Substitute Bill No. 187

February Session, 2014



**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 Section 38a-907 of the general statutes is repealed and the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, 2014*):

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, which shall be
10 permanent and survive the entry of an order of conservation,
11 rehabilitation or liquidation, and which shall prohibit: (A) The
12 transaction of further business; (B) the transfer of property; (C)
13 interference with the receiver or with a proceeding under said sections;
14 (D) waste of the insurer's assets; (E) dissipation and transfer of bank
15 accounts; (F) the institution or further prosecution of any actions or
16 proceedings in which the insurer is a party; (G) the obtaining of
17 preferences, judgments, attachments, garnishments, or liens against
18 the insurer, its assets or its policyholders; (H) the levying of execution

19 against the insurer, its assets, or its policyholders; (I) the making of any
20 sale or deed for nonpayment of taxes or assessments that would lessen
21 the value of the assets of the insurer; (J) the withholding from the
22 receiver of books, accounts, documents, or other records relating to the
23 business of the insurer; or (K) any other threatened or contemplated
24 action that might lessen the value of the insurer's assets or prejudice
25 the rights of policyholders, creditors, or shareholders, or the
26 administration of any proceeding under said sections.

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

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

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

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

41 (c) Notwithstanding subsections (a) and (b) of this section or any
42 other provision of this chapter, no person shall be stayed, enjoined or
43 barred from exercising or enforcing any right or cause of action under
44 any pledge, security, credit, loan, advance, reimbursement or
45 guarantee agreement or arrangement or any similar agreement or
46 arrangement or other credit enhancement to which a Federal Home
47 Loan Bank, as defined in 12 USC 1422, as amended from time to time,
48 is a party.

49 Sec. 2. Section 38a-928 of the general statutes is repealed and the

50 following is substituted in lieu thereof (*Effective October 1, 2014*):

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

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

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

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

80 (4) Any transfer not perfected prior to the filing of a petition for

81 liquidation shall be deemed to be made immediately before the filing
82 of the successful petition.

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

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

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

100 (e) Notwithstanding subsections (a) to (d), inclusive, of this section
101 or any other provision of this chapter, no receiver or any other person
102 shall avoid any transfer or obligation that arises under or in connection
103 with any pledge, security, credit, loan, advance, reimbursement or
104 guarantee agreement or arrangement or any similar agreement or
105 arrangement or other credit enhancement to which a Federal Home
106 Loan Bank, as defined in 12 USC 1422, as amended from time to time,
107 is a party, that is made, suffered or incurred prior to or after the filing
108 of a successful petition for rehabilitation or liquidation under sections
109 38a-903 to 38a-961, inclusive. Such transfer or obligation may be
110 avoided by the receiver or other person if such transfer or obligation
111 was made, suffered or incurred with actual intent to hinder, delay or
112 defraud the insurer, the receiver or existing or future creditors.

113 Sec. 3. Subsection (a) of section 38a-930 of the general statutes is
114 repealed and the following is substituted in lieu thereof (*Effective*
115 *October 1, 2014*):

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

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

142 (3) Notwithstanding subdivision (2) of this subsection or any other
143 provision of this chapter, no preference that arises under or in
144 connection with any pledge, security, credit, loan, advance,
145 reimbursement or guarantee agreement or arrangement or any similar

146 agreement or arrangement or other credit enhancement to which a
147 Federal Home Loan Bank, as defined in 12 USC 1422, as amended from
148 time to time, is a party shall be avoided by the liquidator or any other
149 person.

150 [(3)] (4) Where the preference is voidable, the liquidator may
151 recover the property, or if it has been converted, its value from any
152 person who has received or converted the property, except where a
153 bona fide purchaser or lienor has given less than fair equivalent value,
154 he shall have a lien upon the property to the extent of the
155 consideration actually given by him. Where a preference by way of lien
156 or security title is voidable, the court may on due notice order the lien
157 or title to be preserved for the benefit of the estate, in which event the
158 lien or title shall pass to the liquidator.

159 Sec. 4. (NEW) (*Effective October 1, 2014*) With respect to an insurer
160 that is subject to any delinquency proceedings and is a member of a
161 Federal Home Loan Bank, as defined in 12 USC 1422, as amended from
162 time to time:

163 (1) If said bank exercises its rights regarding collateral pledged by
164 such insurer, said bank shall repurchase, to the extent said bank
165 determines in good faith that such repurchase is permissible under
166 applicable laws and regulations and said bank's capital plan and is
167 consistent with said bank's current capital stock practices applicable to
168 its entire membership, any outstanding capital stock that is in excess of
169 the amount of stock of said bank that such insurer is required to hold
170 as a minimum investment.

171 (2) After the appointment of a receiver for such insurer, said bank
172 shall provide, not later than ten business days after a request from
173 such receiver, a process and establish a timeline for all of the following:

174 (A) The release of such insurer's collateral that exceeds the amount
175 required to support remaining secured obligations of such insurer after
176 any repayment of loans as determined in accordance with applicable

177 agreements between said bank and such insurer;

178 (B) The release of such insurer's collateral that remains after
179 repayment in full of all outstanding secured obligations of such
180 insurer;

181 (C) The payment of any fees owed by such insurer and the
182 operation of deposits and other accounts such insurer may have with
183 said bank; and

184 (D) The possible redemption or repurchase of the stock of said bank
185 or excess stock of any class that such insurer is required to hold as a
186 member of said bank.

187 (3) Upon request from a receiver of such insurer, said bank shall
188 provide any available options for such insurer to renew or restructure
189 a loan to defer associated prepayment fees. Any such options shall be
190 subject to market conditions, the terms of such insurer's outstanding
191 loans, the applicable policies of said bank and said bank's compliance
192 with federal laws and regulations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2014	38a-907
Sec. 2	October 1, 2014	38a-928
Sec. 3	October 1, 2014	38a-930(a)
Sec. 4	October 1, 2014	New section

Statement of Legislative Commissioners:

In section 1(a)(1), "and as specified under subsection (c) of this section" was deleted for accuracy and internal consistency.

INS *Joint Favorable Subst.*