



General Assembly

January Session, 2015

Raised Bill No. 6951

LCO No. 4528



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

AN ACT CONCERNING THE INSURERS REHABILITATION AND LIQUIDATION ACT.

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

1 Section 1. (NEW) (*Effective October 1, 2015*) (a) The provisions of this
2 section shall apply in accordance with Title II of the Dodd-Frank Wall
3 Street Reform and Consumer Protection Act, P.L. 111-203, as amended
4 from time to time, with respect to an insurer that is a covered financial
5 company, as defined in 12 USC 5381, as amended from time to time.

6 (b) The Insurance Commissioner may apply by petition to the
7 Superior Court for an order authorizing the commissioner to
8 rehabilitate or liquidate a domestic insurer on any one or more of the
9 following grounds:

10 (1) (A) The Secretary of the Treasury of the United States, in
11 consultation with the President of the United States, has determined
12 that the insurer is a financial company that satisfies the requirements
13 of 12 USC 5383(b), as amended from time to time, (B) such insurer has
14 been notified by said Secretary of such determination, and (C) the

15 board of directors or similar governing body of such insurer acquiesces
16 or consents to the appointment of a receiver pursuant to 12 USC
17 5382(a)(1)(A)(i). Such acquiescence or consent shall be deemed to be
18 consent to an order of rehabilitation or liquidation;

19 (2) The United States District Court for the District of Columbia has
20 issued an order pursuant to 12 USC 5382(a)(1)(A)(iv)(I), as amended
21 from time to time, granting the petition of said Secretary to appoint a
22 receiver of such insurer under 12 USC 5382(a)(1)(A)(i), as amended
23 from time to time; or

24 (3) A petition by said Secretary concerning such insurer has been
25 granted by operation of law pursuant to 12 USC 5382(a)(1)(A)(v), as
26 amended from time to time.

27 (c) Notwithstanding any other provision of chapter 704 of the
28 general statutes, the Superior Court may grant an order of
29 rehabilitation or liquidation under subsection (b) of this section, after
30 notifying such insurer, within twenty-four hours after the
31 commissioner has filed the petition for such order.

32 (d) (1) If the Superior Court does not make a determination on such
33 petition filed by the commissioner within twenty-four hours after such
34 filing, the order of rehabilitation or liquidation shall be deemed
35 granted at the expiration of such twenty-four-hour period. At the time
36 such order is deemed granted under this subdivision, the provisions of
37 chapter 704c of the general statutes shall be deemed to be in effect and
38 the commissioner shall be deemed to be appointed as the receiver and
39 have all applicable powers under chapter 704c of the general statutes,
40 regardless of whether the Superior Court has entered an order of
41 rehabilitation or liquidation.

42 (2) The Superior Court shall expeditiously enter, if an order for
43 rehabilitation or liquidation is deemed granted pursuant to
44 subdivision (1) of this subsection, an order for rehabilitation or
45 liquidation that (A) is effective as of the date such order is deemed

46 granted pursuant to subdivision (1) of this subsection, and (B)
47 conforms to the provisions for rehabilitation or liquidation, as
48 applicable, under chapter 704c of the general statutes.

49 (e) No order of rehabilitation or liquidation under this section shall
50 be subject to any stay or injunction pending appeal.

51 (f) Nothing in this section shall be construed to supersede or impair
52 any other power or authority of the commissioner or the Superior
53 Court under sections 38a-903 to 38a-961 inclusive, of the general
54 statutes.

55 Sec. 2. Subsection (a) of section 38a-930 of the general statutes is
56 repealed and the following is substituted in lieu thereof (*Effective*
57 *October 1, 2015*):

58 (a) (1) A preference is a transfer of any of the property of an insurer
59 to or for the benefit of a creditor, for or on account of an antecedent
60 debt, made or suffered by the insurer within one year before the filing
61 of a successful petition for liquidation under sections 38a-903 to 38a-
62 961, inclusive, the effect of which transfer may be to enable the creditor
63 to obtain a greater percentage of this debt than another creditor of the
64 same class would receive. If a liquidation order is entered while the
65 insurer is already subject to a rehabilitation order, then such transfers
66 shall be deemed preferences if made or suffered within one year before
67 the filing of the successful petition for rehabilitation, or within two
68 years before the filing of the successful petition for liquidation,
69 whichever time is shorter.

70 (2) Any preference may be avoided by the liquidator if: (A) The
71 insurer was insolvent at the time of the transfer; (B) the transfer was
72 made within four months before the filing of the petition; (C) the
73 creditor receiving it or to be benefited thereby or [his] such creditor's
74 agent acting with reference thereto had, at the time when the transfer
75 was made, reasonable cause to believe that the insurer was insolvent
76 or was about to become insolvent; or (D) the creditor receiving it was

77 an officer, or any employee or attorney or other person who was in fact
78 in a position of comparable influence in the insurer to an officer
79 whether or not [he] such employee, attorney or other person held such
80 position, or any shareholder holding directly or indirectly more than
81 five per [centum] cent of any class of any equity security issued by the
82 insurer, or any other person, firm, corporation, association, or
83 aggregation of persons with whom the insurer did not deal at arm's
84 length.

85 (3) Where the preference is voidable, the liquidator may recover the
86 property, or if it has been converted, its value from any person who
87 has received or converted the property, except where a bona fide
88 purchaser or lienor has given less than fair equivalent value, [he] such
89 purchaser or lienor shall have a lien upon the property to the extent of
90 the consideration actually given by [him] such purchaser or lienor.
91 Where a preference by way of lien or security title is voidable, the
92 court may on due notice order the lien or title to be preserved for the
93 benefit of the estate, in which event the lien or title shall pass to the
94 liquidator.

95 (4) Notwithstanding subdivisions (1) to (3), inclusive, of this
96 subsection, a transfer pursuant to a commutation of a reinsurance
97 agreement that is approved by the commissioner or the
98 commissioner's designated appointee under section 38a-962d shall not
99 be voidable as a preference. For the purposes of this subdivision, a
100 commutation of a reinsurance agreement is the elimination of all
101 present and future obligations between the parties, arising from the
102 reinsurance agreement, in exchange for a current consideration.

103 Sec. 3. Subsection (a) of section 38a-944a of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective*
105 *October 1, 2015*):

106 (a) (1) Notwithstanding any provision of sections 38a-903 to 38a-961,
107 inclusive, including any provision permitting the modification of

108 contracts, or other law of a state, and subject to the provisions of
109 subdivision (2) of this subsection, no person shall be stayed or
110 prohibited from exercising: [(1)] (A) A contractual right to terminate,
111 liquidate, accelerate or close out any netting agreement or qualified
112 financial contract with an insurer because of: [(A)] (i) The insolvency,
113 financial condition or default of the insurer at any time, provided that
114 the right is enforceable under applicable law other than sections 38a-
115 903 to 38a-961, inclusive; [,] or [(B)] (ii) the commencement of a formal
116 delinquency proceeding under sections 38a-903 to 38a-961, inclusive; [,]
117 (2) Any] (B) any right under a pledge, security, collateral or guarantee
118 agreement or any other similar security arrangement or credit support
119 document relating to a netting agreement or qualified financial
120 contract; [, (3) Subject] (C) subject to any provision of subsection (b) of
121 section 38a-932, any right to set off or net out any termination value,
122 payment amount [,] or other transfer obligation arising under or in
123 connection with a netting agreement or qualified financial contract
124 where the counterparty or its guarantor is organized under the laws of
125 the United States or a state or foreign jurisdiction approved by the
126 Securities Valuation Office of the National Association of Insurance
127 Commissioners as eligible for netting.

128 (2) No person who is a party to a netting agreement or qualified
129 financial contract with an insurer that is the subject of an insolvency
130 proceeding may exercise any contractual right to terminate, liquidate,
131 accelerate or close out the obligations with respect to such agreement
132 or contract because of the insolvency, financial condition or default of
133 the insurer, or by the commencement of a formal delinquency
134 proceeding under sections 38a-903 to 38a-961, inclusive, (A) until five
135 o'clock p.m., eastern standard time, on the business day following the
136 date of appointment of a receiver, or (B) after such person has received
137 notice that such agreement or contract has been transferred pursuant
138 to the provisions of this section.

139 Sec. 4. Subsection (b) of section 38a-140 of the general statutes is
140 repealed and the following is substituted in lieu thereof (*Effective*

141 *October 1, 2015):*

142 (b) Whenever it appears to the commissioner that any person has
 143 committed a violation of sections 38a-129 to 38a-140, inclusive, that so
 144 impairs the financial condition of a domestic insurance company as to
 145 threaten insolvency or make the further transaction of business by it
 146 hazardous to its policyholders, creditors, securityholders or the public,
 147 the commissioner may proceed as provided in [section 38a-18] chapter
 148 704c to take possession of the property of such domestic insurance
 149 company and to conduct the business thereof.

150 Sec. 5. Section 38a-18 of the general statutes is repealed. (*Effective*
 151 *October 1, 2015)*

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	New section
Sec. 2	<i>October 1, 2015</i>	38a-930(a)
Sec. 3	<i>October 1, 2015</i>	38a-944a(a)
Sec. 4	<i>October 1, 2015</i>	38a-140(b)
Sec. 5	<i>October 1, 2015</i>	Repealer section

Statement of Purpose:

To (1) update the Insurers Rehabilitation and Liquidation Act to reflect provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act, (2) provide that a transfer pursuant to a commutation of a reinsurance agreement shall not be voidable as a preference, (3) specify limits on when a party to a netting agreement or qualified financial contract with an insolvent insurer may exercise such party's right to terminate, liquidate, accelerate or close out obligations with respect to such agreement or contract, and (4) delete an obsolete provision concerning insurer receivership and make a conforming change.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]