



General Assembly

Substitute Bill No. 6951

January Session, 2015



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2 repealed and the following is substituted in lieu thereof (*Effective*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

4 (a) (1) A preference is a transfer of any of the property of an insurer
5 to or for the benefit of a creditor, for or on account of an antecedent
6 debt, made or suffered by the insurer within one year before the filing
7 of a successful petition for liquidation under sections 38a-903 to 38a-
8 961, inclusive, the effect of which transfer may be to enable the creditor
9 to obtain a greater percentage of this debt than another creditor of the
10 same class would receive. If a liquidation order is entered while the
11 insurer is already subject to a rehabilitation order, then such transfers
12 shall be deemed preferences if made or suffered within one year before
13 the filing of the successful petition for rehabilitation, or within two
14 years before the filing of the successful petition for liquidation,
15 whichever time is shorter.

16 (2) Any preference may be avoided by the liquidator if: (A) The
17 insurer was insolvent at the time of the transfer; (B) the transfer was
18 made within four months before the filing of the petition; (C) the

19 creditor receiving it or to be benefited thereby or [his] such creditor's
20 agent acting with reference thereto had, at the time when the transfer
21 was made, reasonable cause to believe that the insurer was insolvent
22 or was about to become insolvent; or (D) the creditor receiving it was
23 an officer, or any employee or attorney or other person who was in fact
24 in a position of comparable influence in the insurer to an officer
25 whether or not [he] such employee, attorney or other person held such
26 position, or any shareholder holding directly or indirectly more than
27 five per [centum] cent of any class of any equity security issued by the
28 insurer, or any other person, firm, corporation, association, or
29 aggregation of persons with whom the insurer did not deal at arm's
30 length.

31 (3) Where the preference is voidable, the liquidator may recover the
32 property, or if it has been converted, its value from any person who
33 has received or converted the property, except where a bona fide
34 purchaser or lienor has given less than fair equivalent value, [he] such
35 purchaser or lienor shall have a lien upon the property to the extent of
36 the consideration actually given by [him] such purchaser or lienor.
37 Where a preference by way of lien or security title is voidable, the
38 court may on due notice order the lien or title to be preserved for the
39 benefit of the estate, in which event the lien or title shall pass to the
40 liquidator.

41 (4) Notwithstanding subdivisions (1) to (3), inclusive, of this
42 subsection, a transfer pursuant to a commutation of a reinsurance
43 agreement that is approved by the commissioner or the
44 commissioner's designated appointee under section 38a-962d shall not
45 be voidable as a preference. For the purposes of this subdivision, a
46 commutation of a reinsurance agreement is the elimination of all
47 present and future obligations between the parties, arising from the
48 reinsurance agreement, in exchange for a current consideration.

49 Sec. 2. Subsection (a) of section 38a-944a of the general statutes is
50 repealed and the following is substituted in lieu thereof (*Effective*
51 *October 1, 2015*):

52 (a) (1) Notwithstanding any provision of sections 38a-903 to 38a-961,
53 inclusive, including any provision permitting the modification of
54 contracts, or other law of a state, and subject to the provisions of
55 subdivision (2) of this subsection, no person shall be stayed or
56 prohibited from exercising: [(1)] (A) A contractual right to terminate,
57 liquidate, accelerate or close out any netting agreement or qualified
58 financial contract with an insurer because of: [(A)] (i) The insolvency,
59 financial condition or default of the insurer at any time, provided that
60 the right is enforceable under applicable law other than sections 38a-
61 903 to 38a-961, inclusive; [,] or [(B)] (ii) the commencement of a formal
62 delinquency proceeding under sections 38a-903 to 38a-961, inclusive; [
63 (2) Any] (B) any right under a pledge, security, collateral or guarantee
64 agreement or any other similar security arrangement or credit support
65 document relating to a netting agreement or qualified financial
66 contract; [. (3) Subject] (C) subject to any provision of subsection (b) of
67 section 38a-932, any right to set off or net out any termination value,
68 payment amount [,] or other transfer obligation arising under or in
69 connection with a netting agreement or qualified financial contract
70 where the counterparty or its guarantor is organized under the laws of
71 the United States or a state or foreign jurisdiction approved by the
72 Securities Valuation Office of the National Association of Insurance
73 Commissioners as eligible for netting.

74 (2) No person who is a party to a netting agreement or qualified
75 financial contract with an insurer that is the subject of an insolvency
76 proceeding may exercise any contractual right to terminate, liquidate,
77 accelerate or close out the obligations with respect to such agreement
78 or contract because of the insolvency, financial condition or default of
79 the insurer, or by the commencement of a formal delinquency
80 proceeding under sections 38a-903 to 38a-961, inclusive, (A) until five
81 o'clock p.m., eastern standard time, on the business day following the
82 date of appointment of a receiver, or (B) after such person has received
83 notice that such agreement or contract has been transferred pursuant
84 to the provisions of this section.

85 Sec. 3. Subsection (b) of section 38a-140 of the general statutes is
86 repealed and the following is substituted in lieu thereof (*Effective*
87 *October 1, 2015*):

88 (b) Whenever it appears to the commissioner that any person has
89 committed a violation of sections 38a-129 to 38a-140, inclusive, that so
90 impairs the financial condition of a domestic insurance company as to
91 threaten insolvency or make the further transaction of business by it
92 hazardous to its policyholders, creditors, securityholders or the public,
93 the commissioner may proceed as provided in [section 38a-18] chapter
94 704c to take possession of the property of such domestic insurance
95 company and to conduct the business thereof.

96 Sec. 4. Section 38a-18 of the general statutes is repealed. (*Effective*
97 *October 1, 2015*)

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

INS *Joint Favorable Subst.*