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STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Testimony

Insurance and Real Estate Committee

March 17, 2015

House Bill No. 6951 (Raised) An Act Concerning the Insurers Rehabilitation and Liquidation Act.

Senator Crisco, Representative Megna, Ranking Members, and members of the Insurance and Real Estate Committee, thank you for raising House Bill No. 6951, An Act Concerning the Insurers Rehabilitation and Liquidation Act.

As you know, pursuant to the McCarran-Ferguson Act (15 U.S.C. § 1011 et. seq.) Congress has delegated to the states the principal responsibility for the regulation of insurance, and has exempted insurance company receiverships from the federal bankruptcy laws. Thus, state law – specifically the "Insurers Liquidation and Rehabilitation Act," Chapter 704c of the Connecticut General Statutes, governs the rehabilitation and liquidation of financially troubled or insolvent insurers.

Connecticut's insurance receivership laws are based on the provisions of a National Association of Insurance Commissioners model act and they provide for a comprehensive scheme for the rehabilitation and liquidation of insurance companies. Given the complex nature of many of the Connecticut based insurers that conduct business throughout this country and internationally, it is of critical importance to the State of Connecticut, to update when appropriate, the insurance receivership statutes to improve the methods for rehabilitating insurers, enhance the efficiency and economy of liquidation, and reduce legal uncertainty and litigation.

In this regard, Raised Bill 6951 proposes to do the following:

Section 1. - Amends the Connecticut insurance receivership statutes to add provisions concerning the rehabilitation or liquidation of a domestic insurance company that is a covered financial company under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 (the "Dodd-Frank Act"). Such provisions: (1) set forth the grounds upon which the Insurance Commissioner may file a petition for an order of rehabilitation or liquidation with respect to the insurer; (2) provide that after notice to the insurer, the Superior Court may grant an order on the petition for rehabilitation or liquidation within 24 hours after its filing and that if the court does not make a determination on a petition for rehabilitation or liquidation filed by the Commissioner within 24 hours after its filing, then it shall be deemed granted by operation of law upon the expiration of the 24-hour period; (3) sets forth provisions concerning the court order and the Commissioner's powers and authority.

<u>Background</u>
Title II of the Dodd-Frank Act creates a new orderly liquidation authority for the dissolution of failing systemically important financial companies, including qualifying insurance companies when certain conditions are found to exist, with the Federal Deposit Insurance Corporation (FDIC) generally seeking the appointment as receiver. However, in the case of qualifying insurance companies, the liquidation or rehabilitation of such a financial company will be conducted as provided under state law, however the Insurance Commissioner's responsibilities under the Dodd-Frank Act require state statutes that assure immediate execution of state receiverships necessary to effectively respond to a national financial crisis. If there is a federal determination that a domestic insurance company meets the standards in 12 U.S.C. § 5383(b), then the Dodd-Frank Act anticipates that the insurance company would be placed immediately into receivership pursuant to state law. If at the end of the 60-day period provided for under 12 U.S.C. § 5383(e)(3) the Insurance Commissioner has not filed the appropriate state judicial action to place the insurer into orderly liquidation, the FDIC shall have the authority to stand in the place of the Commissioner and file the appropriate judicial action in the appropriate state court to place the insurer into orderly liquidation under the laws and requirements of the state. The text of this legislative proposal was developed by the National Association of Insurance Commissioners as a guide to states for establishing timing and procedural rules for the expeditious entry and implementation of receivership orders that involve resolution under the Dodd-Frank Act of systemically important insurance financial institutions.

<u>Section 2.</u> - Amends Conn. Gen. Stat. § 38a-930, concerning voidable property transfers made within one year of receivership of an insurer, to exempt reinsurance commutations of the insurer that were approved by the Insurance Commissioner pursuant to the administrative supervision statute, Conn. Gen. Stat. § 38a-962d.

<u>Background</u>
The Insurance Commissioner has statutory authority to place a domestic insurer that is in a hazardous financial condition under the administrative supervision of the Commissioner to supervise the operations of the insurer, pre-receivership. In supervision, the insurer's management remains in place subject to restrictions in the supervision order (based on Conn. Gen. Stat. § 38a-962d) and the direction of the Commissioner as supervisor. With the approval of the Commissioner, an insurer under administrative supervision may negotiate and enter into a commutation of one or more reinsurance agreements made with another insurer. Such commutation(s) eliminate all present and future obligations between the parties arising under the reinsurance agreement in exchange for current consideration, and usually will have the effect of improving the financial condition of the company under supervision. In the event the insurer goes into receivership, however, Conn. Gen. Stat. § 38a-930

gives the Commissioner as the court appointed liquidator of the insurer, the ability to void the transfer of money paid by the insurer in liquidation to its counterparty in the reinsurance commutation if the transfer was made within one year of the date of liquidation. This legislation will protect reinsurance commutations made within one year of liquidation when the commutation was approved by the Commissioner because the insurer was prior to liquidation, under the administrative supervision of the Commissioner. This will benefit both parties to the transaction because it will help facilitate commercially reasonable commutations involving a financially impaired insurer to help eliminate the financial impairment or otherwise resolve its liabilities as well as allow the counter-party to obtain the benefit of the negotiated agreement that was approved by the Commissioner in the event the insurer subsequently goes into liquidation proceedings.

Section 3. - Amends Conn. Gen. Stat. § 38a-944a, concerning receivership treatment of netting agreements and qualified financial contracts (QFC) entered into by a Connecticut domestic insurer, to provide for a 24 hour stay with respect to the termination of a netting agreement or QFC of an insurer placed in an insolvency proceeding.

Background

Conn. Gen. Stat. § 38a-944a is an insurance receivership statute that permits the exercise of a contractual right to cause the termination, liquidation, acceleration or close out of obligations with respect to any netting agreement or qualified financial contract (QFC) with an insurer because of the insolvency, financial condition or default of the insurer, or the commencement of a receivership proceeding. QFC is defined as a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement and similar agreements. The statute is based upon similar provisions contained in the U.S. Bankruptcy Code and the Federal Deposit Insurance Act (FDIA). It reflects the common practice with respect to derivatives and certain other types of financial contracts entered into by large financial institutions, to permit the non-defaulting counter-party to exercise early termination rights and other contractual remedies upon an event of default.

The proposed amendment to Conn. Gen. Stat. 38a-944a will adopt a similar provision that exists in the FDIA to provide for a 24 hour stay to allow for the transfer of a QFCs by the receiver of the insurer to another entity rather than permitting the immediate termination and netting of the QFC. This limited stay on the exercise of early termination rights and other remedies with regard to QFCs will facilitate the effective resolution of a financially impaired insurance company, especially including any domestic insurer subject to resolution under Title II of the Dodd-Frank Act (see discussion above concerning Section 1 of HB 6951).

Section 4. – Makes a technical amendment to Conn. Gen. Stat. § 38a-140(b), concerning impairment of the financial condition of a domestic insurer due to a violation of the Insurance Holding Company Act. This amendment replaces the reference to Conn. Gen. Stat. § 38a-18 – which is repealed in Section 5 – with a general reference to the chapter governing insurance receivership proceedings.

Section 5. - Repeals Conn. Gen. Stat. § 38a-18 concerning grounds for the Insurance Commissioner to make application to the Superior Court for an order placing any domestic insurance company into receivership.

Background
Conn. Gen. Stat. § 38a-18 (formerly Conn. Gen. Stat. § 38-9 and deriving from 1902 legislation), should have been repealed in 1979 when Public Act 79-383 enacted the Insurers Rehabilitation and Liquidation Act , now codified as Chapter 704c, and all of the then existing insurance receivership statutes other than this section were repealed by P.A. 79-383 § 60. The provisions of Chapter 704c provide a comprehensive scheme for the rehabilitation and liquidation of insurance companies. Conn. Gen. Stat. § 38a-18 serves no purpose and should be repealed.

The Insurance Department thanks the Insurance Committee for raising H.B. 6951 and respectfully requests that it be given a Favorable Report.