



General Assembly

February Session, 2024

Raised Bill No. 323

LCO No. 2269



Referred to Committee on INSURANCE AND REAL ESTATE

Introduced by:
(INS)

***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 Section 38a-907 of the general statutes is repealed and the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, 2024*):

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] Except as provided in subsection (c) of this section, an
8 application or petition under sections 38a-912, 38a-914, 38a-915, 38a-918,
9 38a-919 and 38a-920, shall operate as an automatic stay applicable to all
10 persons, other than the receiver, which shall be permanent and survive
11 the entry of an order of conservation, rehabilitation or liquidation, and
12 which shall prohibit: (A) The transaction of further business; (B) the
13 transfer of property; (C) interference with the receiver or with a
14 proceeding under said sections; (D) waste of the insurer's assets; (E)
15 dissipation and transfer of bank accounts; (F) the institution or further

16 prosecution of any actions or proceedings in which the insurer is a party;
17 (G) the obtaining of preferences, judgments, attachments, garnishments,
18 or liens against the insurer, its assets or its policyholders; (H) the levying
19 of execution against the insurer, its assets, or its policyholders; (I) the
20 making of any sale or deed for nonpayment of taxes or assessments that
21 would lessen the value of the assets of the insurer; (J) the withholding
22 from the receiver of books, accounts, documents, or other records
23 relating to the business of the insurer; or (K) any other threatened or
24 contemplated action that might lessen the value of the insurer's assets
25 or prejudice the rights of policyholders, creditors, or shareholders, or
26 the 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 notice
31 to the receiver and a hearing, may modify or grant relief from the stay,
32 provided said person shall have the burden of proof and shall establish
33 by clear and convincing evidence that such relief should be granted.

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

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

40 (c) Notwithstanding the provisions of subsections (a) and (b) of this
41 section or any other provision of this chapter, no person, for a period of
42 not more than ten business days from the date of an order instituting a
43 delinquency proceeding, whether formal, informal, administrative or
44 judicial, shall be stayed, enjoined or barred from exercising or enforcing
45 any right or cause of action under any pledge, security, credit, collateral,
46 loan, advance, reimbursement or guarantee agreement or arrangement
47 or any similar agreement or arrangement or other credit enhancement

48 to which a Federal Home Loan Bank, as defined in 12 USC 1422, as
49 amended from time to time, is a party.

50 Sec. 2. Section 38a-928 of the general statutes is repealed and the
51 following is substituted in lieu thereof (*Effective October 1, 2024*):

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

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

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

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

80 created.

81 (4) Any transfer not perfected prior to the filing of a petition for
82 liquidation shall be deemed to be made immediately before the filing of
83 the successful petition.

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

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

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

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

112 obligation was made, suffered or incurred with actual intent to hinder,
113 delay or defraud the insurer, the receiver or existing or future creditors.

114 Sec. 3. Subsection (a) of section 38a-930 of the general statutes is
115 repealed and the following is substituted in lieu thereof (*Effective October*
116 *1, 2024*):

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

129 (2) [Any] Except as provided in subdivision (5) of this subsection, any
130 preference may be avoided by the liquidator if: (A) The insurer was
131 insolvent at the time of the transfer; (B) the transfer was made within
132 four months before the filing of the petition; (C) the creditor receiving it
133 or to be benefited thereby or such creditor's agent acting with reference
134 thereto had, at the time when the transfer was made, reasonable cause
135 to believe that the insurer was insolvent or was about to become
136 insolvent; or (D) the creditor receiving it was an officer, or any employee
137 or attorney or other person who was in fact in a position of comparable
138 influence in the insurer to an officer whether or not such employee,
139 attorney or other person held such position, or any shareholder holding
140 directly or indirectly more than five per cent of any class of any equity
141 security issued by the insurer, or any other person, firm, corporation,
142 association, or aggregation of persons with whom the insurer did not
143 deal at arm's length.

144 (3) Where the preference is voidable, the liquidator may recover the
145 property, or if it has been converted, its value from any person who has
146 received or converted the property, except where a bona fide purchaser
147 or lienor has given less than fair equivalent value, such purchaser or
148 lienor shall have a lien upon the property to the extent of the
149 consideration actually given by such purchaser or lienor. Where a
150 preference by way of lien or security title is voidable, the court may on
151 due notice order the lien or title to be preserved for the benefit of the
152 estate, in which event the lien or title shall pass to the liquidator.

153 (4) Notwithstanding subdivisions (1) to (3), inclusive, of this
154 subsection, a transfer pursuant to a commutation of a reinsurance
155 agreement that is approved by the commissioner or the commissioner's
156 designated appointee under section 38a-962d shall not be voidable as a
157 preference. For the purposes of this subdivision, a commutation of a
158 reinsurance agreement is the elimination of all present and future
159 obligations between the parties, arising from the reinsurance agreement,
160 in exchange for a current consideration.

161 (5) Notwithstanding the provisions of subdivision (2) of this
162 subsection or any other provision of this chapter, no preference that
163 arises under or in connection with any pledge, security, credit, loan,
164 advance, reimbursement or guarantee agreement or arrangement or any
165 similar agreement or arrangement or other credit enhancement to which
166 a Federal Home Loan Bank, as defined in 12 USC 1422, as amended from
167 time to time, is a party shall be avoided by the liquidator or any other
168 person.

169 Sec. 4. (NEW) (*Effective October 1, 2024*) With respect to an insurer that
170 is subject to any delinquency proceedings, whether formal, informal,
171 administrative or judicial, and is a member of a Federal Home Loan
172 Bank, as defined in 12 USC 1422, as amended from time to time:

173 (1) If such bank exercises such bank's rights regarding collateral
174 pledged by such insurer, such bank, shall repurchase, not later than
175 seven business days after such delinquency proceeding, and to the

176 extent such bank determines in good faith that such repurchase is
177 permissible under applicable laws and regulations and such bank's
178 capital plan and is consistent with such bank's current capital stock
179 practices applicable to such bank's entire membership, any outstanding
180 capital stock that is in excess of the amount of stock of such bank that
181 such insurer is required to hold as a minimum investment.

182 (2) After the appointment of a receiver for such insurer, such bank
183 shall provide to such receiver, not later than ten business days after a
184 request from such receiver, a process and establish a timeline for all of
185 the following:

186 (A) The release of such insurer's collateral that exceeds the amount
187 required to support remaining secured obligations of such insurer after
188 any repayment of loans as determined in accordance with applicable
189 agreements between such bank and such insurer;

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

192 (C) The payment of any fees owed by such insurer and the operation,
193 maintenance, closure or disposition of deposits and other accounts such
194 insurer may have with such bank; and

195 (D) The possible redemption or repurchase of the stock of such bank
196 or excess stock of any class that such insurer is required to hold as a
197 member of such bank.

198 (3) Upon request from a receiver of such insurer, such bank shall
199 provide to such receiver any available options for such insurer to renew
200 or restructure a loan. Any such options shall be subject to market
201 conditions, the terms of such insurer's outstanding loans, the applicable
202 policies of such bank and such bank's compliance with federal laws and
203 regulations.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>October 1, 2024</i>	38a-907
Sec. 2	<i>October 1, 2024</i>	38a-928
Sec. 3	<i>October 1, 2024</i>	38a-930(a)
Sec. 4	<i>October 1, 2024</i>	New section

Statement of Purpose:

To extend certain protections to a Federal Home Loan Bank for any pledge, security, credit, collateral, loan, advance, reimbursement or guarantee agreement or arrangement or any similar agreement or arrangement or other credit enhancement to which such bank is a party with an insurance company that is under conservation, rehabilitation, liquidation or administrative supervision by the Insurance Department.

[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.]