

SENATE BILL 402

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CF 7lr2517

By: **Senator Middleton**

Introduced and read first time: January 27, 2017

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Impaired Entities – Delinquency Proceedings**

3 FOR the purpose of providing that a federal home loan bank may not be stayed or
4 prohibited from exercising certain rights with respect to certain collateral of a certain
5 insurer–member after a certain period; requiring a federal home loan bank to
6 repurchase certain outstanding capital stock of a certain insurer–member under
7 certain circumstances, to a certain extent; requiring a federal home loan bank to
8 establish a certain timeline and process within a certain period after a certain
9 request from a certain receiver; requiring a federal home loan bank to make certain
10 options available with respect to a certain insurer–member and certain loans;
11 prohibiting a receiver from voiding certain transfers or obligations to transfer certain
12 property except under certain circumstances; providing that certain provisions do
13 not affect a receiver’s rights in certain proceedings; defining certain terms; altering
14 a certain definition; clarifying certain language; and generally relating to impaired
15 entities and delinquency proceedings.

16 BY repealing and reenacting, with amendments,
17 Article – Insurance
18 Section 9–201, 9–215, and 9–221
19 Annotated Code of Maryland
20 (2011 Replacement Volume and 2016 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
22 That the Laws of Maryland read as follows:

23 **Article – Insurance**

24 9–201.

25 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(b) “Ancillary state” means a state other than a domiciliary state.

(c) “Creditor” means a person with a claim against an impaired insurer.

(d) “Delinquency proceeding” means a proceeding under this subtitle to liquidate, rehabilitate, reorganize, or conserve an insurer or other entity subject to this subtitle.

(e) “Domiciliary state” means:

(1) the state in which an insurer is incorporated or organized; or

(2) the state of entry of an alien insurer.

(f) “FEDERAL HOME LOAN BANK” MEANS A FEDERAL HOME LOAN BANK ESTABLISHED UNDER THE FEDERAL HOME LOAN BANK ACT, 12 U.S.C. §§ 1421 THROUGH 1449.

(G) “Foreign country” means territory outside of any state.

[(g)] (H) “General assets” means:

(1) all property that is not specifically mortgaged, pledged, deposited, or otherwise encumbered for the security or benefit of specified persons or a limited class of persons;

(2) to the extent that property of an insurer is specifically encumbered, the amount of the property or its proceeds that exceeds the amount necessary to discharge the encumbrance; and

(3) assets held in trust and assets held on deposit for the security or benefit of all policyholders and creditors in the United States.

[(h)] (I) “Impaired insurer” means:

(1) a stock insurer whose assets, less all liabilities and required reserves, do not equal or exceed the capital stock and surplus required for authority to engage in insurance business as a stock insurer;

(2) a mutual insurer, reciprocal insurer, dental plan organization, or nonprofit health service plan whose assets, less liabilities and required reserves, do not equal or exceed the minimum surplus required under this article for authority to engage in insurance business as a mutual insurer, reciprocal insurer, dental plan organization, or nonprofit health service plan; or

(3) as determined by the Commissioner, an insurer that does not have the financial ability to pay an obligation within 30 days after it becomes due.

1 [(i)] (J) “Insurance business” includes any of the acts of an insurance business
2 specified in § 4–205 of this article.

3 (K) “INSURER–MEMBER” MEANS AN INSURER THAT IS A MEMBER OF A
4 FEDERAL HOME LOAN BANK.

5 [(j)] (L) “Receiver” includes a conservator, rehabilitator, and liquidator.

6 [(k)] (M) “Reciprocal state” means a state other than this State in which the
7 substance and effect of the provisions of this subtitle are in force, including the requirement
8 that the Commissioner or equivalent insurance supervisory official be the receiver of an
9 insurer subject to a delinquency proceeding and a provision for avoidance of fraudulent
10 conveyances and preferential transfers.

11 [(l)] (N) (1) “Secured claim” means a claim that:

12 (i) is secured by mortgage, trust deed, pledge, deposit as security,
13 escrow, or otherwise; or

14 (ii) has become a lien on specific assets through judicial process.

15 (2) “Secured claim” does not include a special deposit claim or a claim
16 against general assets.

17 [(m)] (O) (1) “Special deposit claim” means a claim secured by a deposit
18 required by law for the security or benefit of a limited class of persons.

19 (2) “Special deposit claim” does not include a claim against general assets.

20 [(n)] (P) (1) [“State”] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
21 **SUBSECTION, “STATE”** means a state of the United States, the District of Columbia, or
22 Puerto Rico.

23 (2) **WHEN CAPITALIZED, “STATE” MEANS MARYLAND.**

24 [(o)] (Q) “Transfer” means:

25 (1) the sale or other direct or indirect disposition of property or an interest
26 in property;

27 (2) the fixing of a lien on property or an interest in property; or

28 (3) the retention of a security title to property delivered to a debtor.

29 9–215.

(a) On application of the Commissioner at any time, the court may issue ex parte an order that:

(1) directs the Commissioner to take possession and control of all or part of:

(i) the property, books, accounts, documents, and other records of an insurer; and

(ii) the premises that the insurer occupies for the transaction of its business; and

(2) enjoins the insurer and its officers, directors, stockholders, members, subscribers, agents, and all other persons from the transaction of its business without written consent of the Commissioner.

(b) (1) The court shall specify the duration of a seizure order issued under this section.

(2) The duration of the seizure order shall be the time that the court considers necessary for the Commissioner to determine the condition of the insurer.

(3) On motion of the court or either party and after notice that the court considers appropriate, the court may hold hearings and extend, shorten, or modify the terms of the seizure order.

(4) If the Commissioner fails to commence a delinquency proceeding after having had a reasonable opportunity to do so, the court shall vacate the seizure order.

(5) An order of the court under a delinquency proceeding vacates the seizure order.

(c) Issuance of a seizure order under this section does not constitute an anticipatory breach of any contract of the insurer.

(d) (1) At any time after issuance of an ex parte order under this section, an insurer subject to the order may petition the court for a hearing and review of the order.

(2) Within 15 days after receipt of the petition, the court shall hold the hearing and review [of] the order.

(e) (1) If at any time after issuance of a seizure order the court determines that a person whose interest is or will be substantially affected by the order did not appear at the hearing and has not been served, the court may order that notice be given to that person.

(2) The order that notice be given does not stay the effect of any other order previously issued by the court.

(f) At any time during a delinquency proceeding, the court may issue an injunction or order to prevent:

(1) interference with the Commissioner or the delinquency proceeding;

(2) waste of the assets of the insurer;

(3) commencement or prosecution of an action;

(4) obtaining of preferences, judgments, attachments, or other liens; or

(5) levy against the insurer or all or part of its assets.

(g) (1) Except when disclosure is necessary to comply with a court order, all documents and records that relate to a proceeding under this section, including records of the insurer, files of the Administration, and court records and papers, are confidential.

(2) The clerk of the court shall hold all documents and records filed with the court in a proceeding under this section in a confidential file.

(3) After hearing arguments from the parties, the court may order that a document or record be made public.

(h) Notwithstanding any other provision of law, the Commissioner may not be required to post a bond as a prerequisite for issuance of an order under this section.

(I) (1) (I) AFTER THE SEVENTH DAY FOLLOWING THE FILING OF A DELINQUENCY PROCEEDING, A FEDERAL HOME LOAN BANK MAY NOT BE STAYED OR PROHIBITED FROM EXERCISING ITS RIGHTS REGARDING COLLATERAL PLEDGED BY AN INSURER-MEMBER.

(II) IF A FEDERAL HOME LOAN BANK EXERCISES ITS RIGHTS REGARDING COLLATERAL PLEDGED BY AN INSURER-MEMBER WHO IS SUBJECT TO A DELINQUENCY PROCEEDING, THE FEDERAL HOME LOAN BANK SHALL REPURCHASE ANY OUTSTANDING CAPITAL STOCK:

1. THAT EXCEEDS THE AMOUNT OF FEDERAL HOME LOAN BANK STOCK THAT THE INSURER-MEMBER IS REQUIRED TO HOLD AS A MINIMUM INVESTMENT; AND

2. TO THE EXTENT THE FEDERAL HOME LOAN BANK IN GOOD FAITH DETERMINES THE REPURCHASE TO BE:

1 A. PERMISSIBLE UNDER APPLICABLE LAWS,
2 REGULATIONS, REGULATORY OBLIGATIONS, AND THE FEDERAL HOME LOAN BANK'S
3 CAPITAL PLAN; AND

4 B. CONSISTENT WITH THE FEDERAL HOME LOAN BANK'S
5 CURRENT CAPITAL STOCK PRACTICES APPLICABLE TO ITS ENTIRE MEMBERSHIP.

6 (2) AFTER THE APPOINTMENT OF A RECEIVER FOR AN
7 INSURER-MEMBER, THE FEDERAL HOME LOAN BANK, WITHIN 10 BUSINESS DAYS
8 AFTER A REQUEST FROM THE RECEIVER, SHALL PROVIDE A PROCESS AND
9 ESTABLISH A TIMELINE FOR THE FOLLOWING:

10 (I) THE RELEASE OF COLLATERAL THAT EXCEEDS THE AMOUNT
11 REQUIRED TO SUPPORT SECURED OBLIGATIONS REMAINING AFTER ANY
12 REPAYMENT OF LOANS, AS DETERMINED IN ACCORDANCE WITH THE APPLICABLE
13 AGREEMENTS BETWEEN THE FEDERAL HOME LOAN BANK AND THE
14 INSURER-MEMBER;

15 (II) THE RELEASE OF ANY OF THE INSURER-MEMBER'S
16 COLLATERAL REMAINING IN THE FEDERAL HOME LOAN BANK'S POSSESSION AFTER
17 FULL REPAYMENT OF ALL OUTSTANDING SECURED OBLIGATIONS OF THE
18 INSURER-MEMBER;

19 (III) THE PAYMENT OF ANY FEES OWED BY THE
20 INSURER-MEMBER TO THE FEDERAL HOME LOAN BANK;

21 (IV) THE OPERATION OF DEPOSITS AND OTHER ACCOUNTS OF
22 THE INSURER-MEMBER WITH THE FEDERAL HOME LOAN BANK; AND

23 (V) THE POSSIBLE REDEMPTION OR REPURCHASE OF FEDERAL
24 HOME LOAN BANK STOCK OR EXCESS STOCK OF ANY CLASS THAT AN
25 INSURER-MEMBER IS REQUIRED TO OWN.

26 (3) ON REQUEST OF A RECEIVER FOR AN INSURER-MEMBER, THE
27 FEDERAL HOME LOAN BANK SHALL PROVIDE ANY OPTIONS AVAILABLE TO THE
28 INSURER-MEMBER TO RENEW OR RESTRUCTURE A LOAN, SUBJECT TO:

29 (I) MARKET CONDITIONS;

30 (II) THE TERMS OF ANY OUTSTANDING LOANS MADE TO THE
31 INSURER-MEMBER;

1 **(III) THE APPLICABLE POLICIES OF THE FEDERAL HOME LOAN**
2 **BANK; AND**

3 **(IV) THE FEDERAL HOME LOAN BANK'S COMPLIANCE WITH**
4 **FEDERAL LAWS AND REGULATIONS.**

5 9–221.

6 (a) A transfer of or lien on the property of an insurer is voidable if the transfer or
7 lien is:

8 (1) made or created within 4 months before the issuance of a show–cause
9 order under this subtitle;

10 (2) made or created with the intent to give a creditor a preference or to
11 enable the creditor to obtain a greater percentage of the debt than another creditor of the
12 same class; and

13 (3) accepted by the creditor having reasonable cause to believe that the
14 preference will occur.

15 (b) Each director, officer, employee, stockholder, member, subscriber, and any
16 other person acting on behalf of an insurer that is concerned in a voidable transfer under
17 subsection (a) of this section and each person that, as a result of the voidable transfer,
18 receives any property of the insurer or benefits from the voidable transfer:

19 (1) is personally liable; and

20 (2) shall account to the Commissioner.

21 (c) The Commissioner as receiver in a delinquency proceeding may:

22 (1) avoid a transfer of or lien on the property of an insurer that a creditor,
23 stockholder, subscriber, or member of the insurer might have avoided; and

24 (2) recover the transferred property or its value from the person that
25 received it unless that person was a bona fide holder for value before the date of issuance
26 of a show–cause order under this subtitle.

27 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
28 **THE RECEIVER FOR AN INSURER–MEMBER MAY NOT VOID ANY TRANSFER OF, OR ANY**
29 **OBLIGATION TO TRANSFER, MONEY OR ANY OTHER PROPERTY ARISING UNDER OR**
30 **IN CONNECTION WITH:**

31 **(I) A FEDERAL HOME LOAN BANK SECURITY AGREEMENT;**

(II) A PLEDGE, A SECURITY, COLLATERAL, OR A GUARANTEE AGREEMENT; OR

(III) ANY OTHER SIMILAR ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A FEDERAL HOME LOAN BANK SECURITY AGREEMENT MADE IN THE ORDINARY COURSE OF BUSINESS AND IN COMPLIANCE WITH THE APPLICABLE FEDERAL HOME LOAN BANK AGREEMENT.

(2) THE RECEIVER MAY VOID A TRANSFER UNDER THIS SECTION IF THE TRANSFER WAS MADE WITH INTENT TO HINDER, DELAY, OR DEFRAUD:

(I) THE INSURER-MEMBER;

(II) THE RECEIVER FOR THE INSURER-MEMBER; OR

(III) EXISTING OR FUTURE CREDITORS.

(E) THIS SECTION MAY NOT AFFECT A RECEIVER'S RIGHTS REGARDING ADVANCES TO AN INSURER-MEMBER IN DELINQUENCY PROCEEDINGS UNDER 12 C.F.R. § 1266.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2017.