

SENATE BILL 458

C4

1lr1928
CF HB 504

By: **Senator Feldman**

Introduced and read first time: January 20, 2021

Assigned to: Finance

Committee Report: Favorable

Senate action: Adopted

Read second time: February 14, 2021

CHAPTER _____

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 of or obligations to transfer
12 certain property except under certain circumstances; providing that certain
13 provisions do not affect a receiver’s rights in certain proceedings; defining certain
14 terms; altering a certain definition; clarifying certain language; and generally
15 relating to impaired 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 (2017 Replacement Volume and 2020 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



Article – Insurance

9–201.

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

(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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 [(o)] (Q) “Transfer” means:

31 (1) the sale or other direct or indirect disposition of property or an interest

1 in property;

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

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

4 9–215.

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

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

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

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

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

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

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

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

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

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

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

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

31 (2) Within 15 days after receipt of the petition, the court shall hold the

1 hearing and review [of] the order.

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

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

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

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

11 (2) waste of the assets of the insurer;

12 (3) commencement or prosecution of an action;

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

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

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

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

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

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

24 **(I) (1) (I) AFTER THE 14TH DAY FOLLOWING THE FILING OF A**
25 **DELINQUENCY PROCEEDING, A FEDERAL HOME LOAN BANK MAY NOT BE STAYED OR**
26 **PROHIBITED FROM EXERCISING ITS RIGHTS REGARDING COLLATERAL PLEDGED BY**
27 **AN INSURER-MEMBER.**

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

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

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

6 A. PERMISSIBLE UNDER APPLICABLE LAWS,
7 REGULATIONS, REGULATORY OBLIGATIONS, AND THE FEDERAL HOME LOAN BANK'S
8 CAPITAL PLAN; AND

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

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

15 (I) THE RELEASE OF COLLATERAL THAT EXCEEDS THE AMOUNT
16 REQUIRED TO SUPPORT SECURED OBLIGATIONS REMAINING AFTER ANY
17 REPAYMENT OF LOANS, AS DETERMINED IN ACCORDANCE WITH THE APPLICABLE
18 AGREEMENTS BETWEEN THE FEDERAL HOME LOAN BANK AND THE
19 INSURER-MEMBER;

20 (II) THE RELEASE OF ANY OF THE INSURER-MEMBER'S
21 COLLATERAL REMAINING IN THE FEDERAL HOME LOAN BANK'S POSSESSION AFTER
22 FULL REPAYMENT OF ALL OUTSTANDING SECURED OBLIGATIONS OF THE
23 INSURER-MEMBER;

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

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

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

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

1 **(I) MARKET CONDITIONS;**

2 **(II) THE TERMS OF ANY OUTSTANDING LOANS MADE TO THE**
3 **INSURER—MEMBER;**

4 **(III) THE APPLICABLE POLICIES OF THE FEDERAL HOME LOAN**
5 **BANK; AND**

6 **(IV) THE FEDERAL HOME LOAN BANK’S COMPLIANCE WITH**
7 **FEDERAL LAWS AND REGULATIONS.**

8 9–221.

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

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

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

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

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

22 (1) is personally liable; and

23 (2) shall account to the Commissioner.

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

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

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

30 **(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**

1 THE RECEIVER FOR AN INSURER–MEMBER MAY NOT VOID ANY TRANSFER OF, OR ANY
2 OBLIGATION TO TRANSFER, MONEY OR ANY OTHER PROPERTY ARISING UNDER OR
3 IN CONNECTION WITH:

4 (I) A FEDERAL HOME LOAN BANK SECURITY AGREEMENT;

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

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

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

13 (I) THE INSURER–MEMBER;

14 (II) THE RECEIVER FOR THE INSURER–MEMBER; OR

15 (III) EXISTING OR FUTURE CREDITORS.

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
20 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.