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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION ACT

Introduced By: Senator Roger Picard

Date Introduced: February 12, 2024

Referred To: Senate Commerce

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-14.3-5, 27-14.3-30 and 27-14.3-32 of the General Laws in
2 Chapter 27-14.3 entitled "Insurers' Rehabilitation and Liquidation Act" are hereby amended to read
3 as follows:

4 **27-14.3-5. Injunctions and orders.**

5 (a) Any receiver appointed in a proceeding under this chapter may at any time apply for,
6 and any court of general jurisdiction may grant, restraining orders, preliminary and permanent
7 injunctions, and other orders as may be deemed necessary and proper to prevent:

8 (1) The transaction of further business;

9 (2) The transfer of property;

10 (3) Interference with the receiver or with a proceeding under this chapter;

11 (4) Waste of the insurer's assets;

12 (5) Dissipation and transfer of bank accounts;

13 (6) The institution or further prosecution of any actions or proceedings;

14 (7) The obtaining of preferences, judgments, attachments, garnishments, or liens against
15 the insurer, its assets, or its policyholders;

16 (8) The levying of execution against the insurer, its assets, or its policyholders;

17 (9) The making of any sale or deed for nonpayment of taxes or assessments that would
18 lessen the value of the assets of the insurer;

19 (10) The withholding from the receiver of books, accounts, documents, or other records

1 relating to the business of the insurer; or

2 (11) Any other threatened or contemplated action that might lessen the value of the
3 insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the
4 administration of any proceeding under this chapter.

5 (b) The receiver may apply to any court outside of the state for the relief described in § 27-
6 14.3-4(a).

7 (c) Notwithstanding subsections (a) or (b) of this section, § 27-14.3-19(a) or any other
8 provision of this chapter, no person, for more than ten (10) days, shall be restrained, stayed,
9 enjoined, or prohibited from exercising or enforcing any right or cause of action under any pledge,
10 security, credit, collateral, loan, advances, reimbursement or guarantee agreement or arrangement
11 or any similar agreement, arrangement or other credit enhancement to which a federal home loan
12 bank is a party.

13 (d) A federal home loan bank exercising its rights regarding collateral pledged by an
14 insurer-member shall, within seven (7) days of receiving a redemption request made by the insurer-
15 member, repurchase any of the insurer-member's outstanding capital stock in excess of the amount
16 the insurer-member must hold as a minimum investment. The federal home loan bank shall
17 repurchase the excess outstanding capital stock only to the extent that it determines in good faith
18 that the repurchase is both of the following:

19 (1) Permissible under federal laws and regulations and the federal home loan bank's capital
20 plan; and

21 (2) Consistent with the capital stock practices currently applicable to the federal home loan
22 bank's entire membership.

23 (e)(1) Not later than ten (10) days after the date of appointment of a receiver in a proceeding
24 under this chapter involving an insurer-member of a federal home loan bank, the federal home loan
25 bank shall provide to the receiver a process and timeline for the following:

26 (i) The release of any collateral held by the federal home loan bank that exceeds the amount
27 that is required to support the secured obligations of the insurer-member and that is remaining after
28 any repayment of loans, as determined under the applicable agreements between the federal home
29 loan bank and the insurer-member;

30 (ii) The release of any collateral of the insurer-member remaining in the federal home loan
31 bank's possession following repayment in full of all outstanding secured obligations of the insurer-
32 member;

33 (iii) The payment of fees owed by the insurer-member and the operation, maintenance,
34 closure, or disposition of deposits and other accounts of the insurer-member, as mutually agreed

1 upon by the receiver and the federal home loan bank;

2 (iv) Any redemption or repurchase of federal home loan bank stock or excess stock of any
3 class that the insurer-member is required to own under agreements between the federal home loan
4 bank and the insurer-member.

5 (f) Upon the request of a receiver appointed in a proceeding under this chapter involving a
6 federal home loan bank insurer-member, the federal home loan bank shall provide to the receiver
7 any available options for the insurer-member to renew or restructure a loan. In determining which
8 options are available, the federal home loan bank may consider market conditions, the terms of any
9 loans outstanding to the insurer-member, the applicable policies of the federal home loan bank, and
10 the federal laws and regulations applicable to federal home loan banks.

11 (g) As used in this section, "federal home loan bank" means an institution, chartered under
12 the "Federal Home Loan Bank Act of 1932," 12 U.S.C. § 1421, et seq. and "insurer-member" means
13 a member of the federal home loan bank in question that is an insurer.

14 **27-14.3-30. Fraudulent transfers prior to petition.**

15 (a) Every transfer made or suffered and every obligation incurred by an insurer within one
16 year prior to the filing of a successful petition for rehabilitation or liquidation under this chapter is
17 fraudulent as to then existing and future creditors if made or incurred without fair consideration, or
18 with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or
19 an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this chapter,
20 which is fraudulent under this section, may be avoided by the receiver, except as to a person who
21 in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that
22 any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for the
23 transfer, lien, or obligation, may retain the property, lien, or obligation as security for repayment.
24 The court may, on due notice, order any transfer or obligation to be preserved for the benefit of the
25 estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser,
26 lienor, or obligee.

27 (b)(1) A transfer of property other than real property shall be deemed made or suffered
28 when it becomes so far perfected that no subsequent lien obtainable by legal or equitable
29 proceedings on a simple contract could become superior to the rights of the transferee under § 27-
30 14.3-32(c);

31 (2) A transfer of real property shall be deemed made or suffered when it becomes so far
32 perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to
33 the rights of the transferee;

34 (3) A transfer that creates an equitable lien shall not be deemed perfected if there are

1 available means by which a legal lien could be created;

2 (4) Any transfer not perfected prior to the filing of a petition for liquidation shall be deemed
3 made immediately before the filing of the successful petition;

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

6 (c) Any transaction of the insurer with a reinsurer shall be deemed fraudulent and may be
7 avoided by the receiver under subsection (a) of this section if:

8 (1) The transaction consists of the termination, adjustment, or settlement of a reinsurance
9 contract in which the reinsurer is released from any part of its duty to pay the originally specified
10 share of losses that had occurred prior to the time of the transactions, unless the reinsurer gives a
11 present fair equivalent value for the release; and

12 (2) Any part of the transaction took place within one year prior to the date of filing of the
13 petition through which the receivership was commenced.

14 (d) Every person receiving any property from the insurer or any benefit of this which is a
15 fraudulent transfer under subsection (a) of this section shall be personally liable for it and shall be
16 bound to account to the liquidator.

17 (e) Notwithstanding subsection (a) of this section, § 27-14.3-31, or any other provision of
18 this chapter, no receiver or any other person shall avoid any transfer of, or any obligation to transfer,
19 money or any other property arising under or in connection with any pledge, security, credit,
20 collateral, loan, advances, reimbursement or guarantee agreement or arrangement or any similar
21 agreement, arrangement or other credit enhancement to which a federal home loan bank, as defined
22 in § 27-14.3-5, is a party, that is made, incurred or assumed prior to or after the filing of a successful
23 petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to
24 avoidance under this section or § 27-14.3-31; provided, however, that a transfer may be avoided
25 under this section or § 27-14.3-31 if the transfer was made with actual intent to hinder, delay or
26 defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

27 **27-14.3-32. Voidable preferences and liens.**

28 (a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of
29 a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year
30 before the filing of a successful petition for liquidation under this chapter, the effect of which
31 transfer may be to enable the creditor to obtain a greater percentage of this debt than another
32 creditor of the same class would receive. If a liquidation order is entered while the insurer is already
33 subject to a rehabilitation order, then the transfers shall be deemed preferences if made or suffered
34 within one year before the filing of the successful petition for rehabilitation, or within two (2) years

1 before the filing of the successful petition for liquidation, whichever time is shorter;

2 (2) Any preference may be avoided by the liquidator if:

3 (i) The insurer was insolvent at the time of the transfer;

4 (ii) The transfer was made within four (4) months before the filing of the petition;

5 (iii) The creditor receiving it or to be benefited by it or his or her agent acting with reference
6 to it had, at the time when the transfer was made, reasonable cause to believe that the insurer was
7 insolvent or was about to become insolvent; or

8 (iv) The creditor receiving it was an officer, or any employee or attorney or other person
9 who was in fact in a position of comparable influence in the insurer to an officer whether or not he
10 or she held the petition, or any shareholder holding directly or indirectly more than five percent
11 (5%) of any class of any equity security issued by the insurer, or any other person, firm, corporation,
12 association, or aggregation of persons with whom the insurer did not deal at arm's length;

13 (3) Where the preference is voidable, the liquidator may recover the property or, if it has
14 been converted, its value from any person who has received or converted the property; provided,
15 that where a bona fide purchaser or lienor has given less than fair equivalent value, he or she shall
16 have a lien upon the property to the extent of the consideration actually given by him or her. Where
17 a preference by way of lien or security title is voidable, the court may on due notice order the lien
18 or title preserved for the benefit of the estate, in the event the lien or title shall pass to the liquidator.

19 (4) Notwithstanding subsection (a)(2) of this section, or any other provision of this chapter,
20 no receiver or any other person shall avoid any preference arising under or in connection with any
21 pledge, security, credit, collateral, loan, advances, reimbursement or guarantee agreement or
22 arrangement or any similar agreement, arrangement or other credit enhancement to which a federal
23 home loan bank, as defined in § 27-14.3-5, is a party.

24 (b)(1) A transfer of property other than real property shall be deemed made or suffered
25 when it becomes so far perfected that no subsequent lien obtainable by legal or equitable
26 proceedings on a simple contract could become superior to the rights of the transferee;

27 (2) A transfer of real property shall be deemed made or suffered when it becomes so far
28 perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to
29 the rights of the transferee;

30 (3) A transfer which creates an equitable lien shall not be deemed perfected if there are
31 available means by which a legal lien could be created;

32 (4) A transfer not perfected prior to the filing of a petition for liquidation shall be deemed
33 made immediately before the filing of the successful petition;

34 (5) The provisions of this subsection apply whether or not there are or were creditors who

1 might have obtained liens or persons who might have become bona fide purchasers.

2 (c)(1) A lien obtainable by legal or equitable proceedings upon a simple contract is one
3 arising in the ordinary course of the proceedings upon the entry or docketing of a judgment or
4 decree, or upon attachment, garnishment, execution, or a similar process, whether before, upon, or
5 after judgment or decree and whether before or upon levy. It does not include liens that under
6 applicable law are given a special priority over other liens which are prior in time;

7 (2) A lien obtainable by legal or equitable proceedings could become superior to the rights
8 of a transferee or a purchaser could obtain rights superior to the rights of a transferee, within the
9 meaning of subsection (b) of this section, if the consequences would follow only from the lien or
10 purchase itself, or from the lien or purchase followed by any step wholly within the control of the
11 lienholder or purchaser, with or without the aid of ministerial action by public officials. That lien
12 could not become superior and that purchase could not create superior rights for the purpose of
13 subsection (b) of this section through any acts subsequent to the obtaining of the lien or subsequent
14 to the purchase which require the agreement or concurrence of any third party or which require any
15 further judicial action or ruling.

16 (d) A transfer of property for or on account of a new and contemporaneous consideration
17 which is deemed under subsection (b) of this section made or suffered after the transfer because of
18 delay in perfecting it does not by this become a transfer for or on account of an antecedent debt if
19 any acts required by the applicable law to be performed in order to perfect the transfer as against
20 liens or bona fide purchasers' rights are performed within twenty-one (21) days or any period
21 expressly allowed by the law, whichever is less. A transfer to secure a future loan, if the loan is
22 actually made, or a transfer, which becomes security for a future loan, shall have the same effect
23 as a transfer for or on account of a new and contemporaneous consideration.

24 (e) If any lien deemed voidable under subdivision (a)(2) of this section has been dissolved
25 by the furnishing of a bond or other obligation, the surety on which has been indemnified directly
26 or indirectly by the transfer of or the creation of a lien upon any property of an insurer before the
27 filing of a petition under this chapter which results in a liquidation order, the indemnifying transfer
28 or lien shall also be deemed voidable.

29 (f) The property affected by any lien deemed voidable under subsections (a) and (e) of this
30 section shall be discharged from the lien, and that property and any of the indemnifying property
31 transferred to or for the benefit of a surety shall pass to the liquidator, except that the court may on
32 due notice order any lien preserved for the benefit of the estate and the court may direct that
33 conveyance executed as may be proper or adequate to evidence the title of the liquidator.

34 (g) The superior court for the county of Providence shall have summary jurisdiction of any

1 proceeding by the liquidator to hear and determine the rights of any parties under this section.
2 Reasonable notice of any hearing in the proceeding shall be given to all parties in interest, including
3 the obligee of a releasing bond or other similar obligation. Where an order is entered for the
4 recovery of indemnifying property in kind or for the avoidance of an indemnifying lien the court,
5 upon application of any party in interest, shall in the same proceeding ascertain the value of the
6 property or lien, and if the value is less than the amount for which the property is indemnity or than
7 the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon
8 payment of its value, as ascertained by the court, to the liquidator, within any reasonable times as
9 the court shall fix.

10 (h) The liability of the surety under a releasing bond or other similar obligation shall be
11 discharged to the extent of the value of the indemnifying property recovered or the indemnifying
12 lien nullified and avoided by the liquidator, or where the property is retained under subsection (g)
13 of this section to the extent of the amount paid to the liquidator.

14 (i) If a creditor has been preferred, and afterward in good faith gives the insurer further
15 credit without security of any kind for property which becomes a part of the insurer's estate, the
16 amount of the new credit remaining unpaid at the time of the petition may be set off against the
17 preference which would be recoverable from him or her.

18 (j) If an insurer, directly or indirectly, within one year before the filing of a successful
19 petition for liquidation under this chapter, or at any time in contemplation of a proceeding to
20 liquidate it, pays money or transfers property to an attorney at law for services rendered or to be
21 rendered, the transactions may be examined by the court on its own motion or shall be examined
22 by the court on petition of the liquidator and shall be held valid only to the extent of a reasonable
23 amount to be determined by the court, and the excess may be recovered by the liquidator for the
24 benefits of the estate; provided, that where the attorney is in a position of influence in the insurer
25 or an affiliate of the insurer, payment of any money or the transfer of any property to the attorney
26 at law for services rendered or to be rendered shall be governed by the provision of subdivision
27 (a)(2)(iv) of this section.

28 (k)(1) Every officer, manager, employee, shareholder, member, subscriber, attorney, or any
29 other person acting on behalf of the insurer who knowingly participates in giving any preference
30 when he or she has reasonable cause to believe the insurer is or is about to become insolvent at the
31 time of the preference shall be personally liable to the liquidator for the amount of the preference.
32 It is permissible to infer that there is a reasonable cause to believe this if the transfer was made
33 within four (4) months before the date of filing of this successful petition for liquidation;

34 (2) Every person receiving any property from the insurer or the benefit of the property as

1 a preference voidable under subsection (a) of this section shall be personally liable for it and shall
2 be bound to account to the liquidator;

3 (3) Nothing in this subsection shall prejudice any other claim by the liquidator against any
4 person.

5 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE -- INSURERS' REHABILITATION AND LIQUIDATION ACT

1 This act would provide that no person, for over ten (10) days, shall be restricted from
2 enforcing a right under any pledge, security, credit, guarantee agreement, arrangement or other
3 agreement or credit enhancement to which a federal home loan bank is a party. This act would also
4 outline the process and requirements for a federal home loan bank to exercise its rights regarding
5 collateral pledged by an insurer-member pertaining to outstanding capital stock. This act would
6 further provide that no receiver or any other person shall avoid any preference arising under or in
7 connection with any pledge, security, credit, collateral, loan, advances, reimbursement or guarantee
8 agreement or arrangement or any similar agreement, arrangement or other credit enhancement to
9 which a federal home loan bank is a party.

10 This act would take effect upon passage.

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