

CHAPTER 207
FORMERLY
SENATE BILL NO. 154

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO INSURANCE INVESTMENTS, REHABILITATION AND LIQUIDATION.

WHEREAS, a Delaware-domiciled insurance company is eligible to become a member of a Federal Home Loan Bank (“FHLBank”) in order to prudently borrow from such FHLBank on a fully secured basis at attractive funding costs;

WHEREAS, under federal banking law and regulation, an FHLBank, as a secured creditor, is not subject to stay or voidable transfer provisions in the event of an insolvency of a federally insured depository institution, and therefore, an FHLBank is able (if necessary) to promptly apply collateral posted by the insolvent member toward the satisfaction of such member’s outstanding obligations to such FHLBank;

WHEREAS, under existing Delaware law, a receiver for a Delaware-domiciled insurance company has the authority to (a) seek an injunction to prevent a secured creditor, including an FHLBank, from exercising its rights to realize on collateral pledged to secure the obligations of the insurance company to the secured creditor and (b) void transfers of collateral, including those pursuant to a valid security agreement;

WHEREAS, the uncertainty of treatment of an FHLBank as secured creditor under Delaware law results in FHLBanks requiring more stringent and burdensome collateral terms from Delaware-domiciled insurance companies that are FHLBank members compared to collateral terms required from federally insured depository institution members, even if the Delaware-domiciled insurance company has equivalent or superior creditworthiness; and

WHEREAS, this Act eliminates the inconsistency between federal banking law and the rehabilitation and liquidation provisions of Title 18 and will enable the FHLBanks to offer Delaware-domiciled insurance companies collateral terms similar to those terms offered to federally insured depository institution members, thereby improving the terms upon which Delaware-domiciled insurance companies access the low-cost funding offered by the FHLBanks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 13, Title 18, of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§1333. Rules and Regulations.

The Commissioner may issue such reasonable rules, regulations and orders as the Commissioner may deem necessary or desirable to effectuate the purposes of this chapter, including setting standards for the prudent use by domestic insurers of derivative instruments and other qualified financial contracts (as defined in § 5901 of this title), and setting standards (including without limitation any limits or conditions) for domestic insurers qualifying for, entering into advance agreements and reporting borrowings from any Federal Home Loan Bank, as defined in 12 U.S.C. § 1422(1)(A).

Section 2. Amend Chapter 59, Title 18 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5901. Definitions.

(25) “Federal Home Loan Bank” or “FHLBank” shall mean a bank as defined in 12 U.S.C. § 1422(1)(A).

(26) “Federal Home Loan Bank Act” or “FHLBank Act” shall mean 12 U.S.C. § 1421 et. seq.

(27) “Insurer-Member” means an Insurer that is a member of a Federal Home Loan Bank.

§ 5904. Injunctions.

(a) Upon application by the Commissioner for such an order to show cause, or at any time thereafter, the court may without notice issue an injunction restraining the insurer, its officers, directors, stockholders, members, subscribers, agents and all other persons from the transaction of its business or the waste or disposition of its property until the further order of the court.

(b) The court may at any time during a proceeding under this chapter issue such other injunctions or orders as may be deemed necessary to prevent interference with the Commissioner or the proceeding or waste of the assets of the insurer or the commencement or prosecution of any actions or the obtaining of preferences, judgments, attachments, or other liens or the making of any levy against the insurer or against its assets or any part thereof.

(c) Notwithstanding any other provision of law, no bond shall be required of the Commissioner as a prerequisite for the issuance of any injunction or restraining order pursuant to this section.

(d) Notwithstanding subsection (a) above, or any other provision of this chapter to the contrary, the commencement of a delinquency proceeding with respect to an Insurer-Member shall not operate as a stay, injunction or prohibition of the exercise by an FHLBank of its rights regarding collateral pledged by such Insurer-Member.

§ 5925. Voidable transfers.

(a) Any transfer of or lien upon the property of an insurer which is made or created within 4 months prior to the granting of an order to show cause, under this chapter, with the intent of giving to any creditor a preference or of enabling the creditor to obtain a greater percentage of such creditor's debt than any other creditor of the same class and which is accepted by such creditor having reasonable cause to believe that such preference will occur, shall be voidable.

(b) Every director, officer, employee, stockholder, member, subscriber and any other person acting on behalf of such insurer who shall be concerned in any such act or deed and every person receiving thereby any property of such insurer of the benefit thereof shall be personally liable therefor and shall be bound to account to the Commissioner

(c) The Commissioner, as receiver in any proceeding under this chapter, may avoid any transfer of or lien upon the property of an insurer which any creditor, stockholder, subscriber or member of such insurer might have avoided and may recover the property so transferred unless such person was a bona fide holder for value prior to the date of the entering of an order to show cause under this chapter. Such property or its value may be recovered from anyone who has received it except a bona fide holder for value as herein specified.

(d) (1) Notwithstanding subsection (a) above, or any other provision of this chapter to the contrary, the receiver for an Insurer-Member subject to a delinquency proceeding shall not void a transfer made to an FHLBank in the ordinary course of business and in compliance with the advance agreement with such FHLBank. The receiver shall not void a redemption or repurchase of any stock or equity securities made by the FHLBank within 4 months of the commencement of the delinquency proceedings or which received prior approval of the receiver. However, a transfer may be avoided under § 5925(c) of this title if the transfer was made with actual intent to hinder, delay or defraud the Insurer-Member, a receiver appointed for the Insurer-Member or existing or future creditors.

(2) Following the appointment of a receiver for an Insurer-Member and upon request of the receiver, the FHLBank shall, within 10 days of such request, provide a process and establish timing for:

(a) The release of collateral that exceeds the lending value (as determined in accordance with the advance agreement with the FHLBank) required to support secured obligations remaining after any repayment of advances;

(b) The release of any collateral remaining in the FHLBank's possession following repayment of all outstanding secured obligations in full;

(c) The payment of fees and the operation of deposits and other accounts with the FHLBank; and

(d) The possible redemption or repurchase of FHLBank stock or excess stock of any class that an Insurer-Member is required to own.

(3) Upon the request of the receiver for an Insurer-Member, the FHLBank shall provide any available options for such Insurer-Member to renew or restructure an advance to defer associated prepayment fees, to the extent that market conditions, the terms of the advance outstanding to the Insurer-Member, the applicable policies of the FHLBank and compliance with the FHLBank Act and corresponding regulations permit.

(4) Nothing in § 5904(d) or § 5925(d) shall affect the receiver's rights pursuant to 12 C.F.R. § 1266.4 regarding advances to an Insurer-Member in delinquency proceedings.

Section 3. This bill will take effect 90 days after enactment, except that it will only apply to a delinquency proceeding that commences under Chapter 59 of the Delaware Insurance Code on or after the enactment of this bill.

Approved April 08, 2014