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SENATE BILL NO. 637

Offered January 17, 2022

A BILL to amend and reenact § 38.2-1507 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 38.2 a section numbered 38.2-1523, relating to insurers rehabilitation and liquidation; federal home loan bank rights.

Patron—Deeds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-1507 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 38.2 a section numbered 38.2-1523 as follows:

§ 38.2-1507. Further procedure; injunction may be issued.

A. The court may issue an injunction restraining the insurer and its officers, directors, stockholders, members, trustees, agents, employees and all other persons ~~from transacting any business of the insurer, and from transferring, removing or disposing of its property or business for any purpose listed under subsection B~~ until a further order of the court. The injunction may be issued on or after the institution of any delinquency proceeding, except where the rehabilitation or liquidation of the insurer has been referred to the Commission. If the Commission is authorized to proceed with the rehabilitation or liquidation, it may issue injunctions or enter any other appropriate order for the protection of the insurer's policyholders and creditors and the preservation of its property.

B. Any receiver appointed in a proceeding under this chapter may at any time apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to prevent the following:

1. Transaction of further business;
2. Transfer of property;
3. Interference with the receiver or with a proceeding under this chapter;
4. Waste of the insurer's assets;
5. Dissipation and transfer of bank accounts;
6. Institution or further prosecution of any actions or proceedings;
7. Obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;
8. Levying of execution against the insurer, its assets, or its policyholders;
9. Making any sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;
10. Withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or
11. Any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of any proceeding under this chapter.

§ 38.2-1523. Federal home loan bank rights; insurer-members.

A. As used in this section:

"Federal home loan bank" means a federal home loan bank established under the federal Home Loan Bank Act, 12 U.S.C. § 1421 et seq., and any bank that has elected to become a member of the Federal Home Loan Bank System pursuant to § 6.2-811.

"Insurer-member" means an insurer who is a member of a federal home loan bank.

B. The receiver for an insurer-member shall not void any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any federal home loan bank security agreement; any pledge, security, collateral, or guarantee agreement; or any 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. However, a transfer may be voided under this section if the transfer was made with the intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or existing or future creditors. Nothing in this subsection shall affect a receiver's rights regarding advances to an insurer-member in delinquency proceedings pursuant to 12 C.F.R. § 1266.4.

C. After the seventh day following the filing of a delinquency proceeding, a federal home loan bank shall not be stayed or prohibited from exercising its rights regarding collateral pledged by an

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SB637

59 insurer-member. If a federal home loan bank exercises its rights regarding collateral pledged by an
60 insurer-member who is subject to a delinquency proceeding, the federal home loan bank shall
61 repurchase any outstanding capital stock that is in excess of that amount of federal home loan bank
62 stock that the insurer-member is required to hold as a minimum investment to the extent the federal
63 home loan bank in good faith determines the repurchase to be permissible under applicable laws,
64 regulations, regulatory obligations, and the federal home loan bank's capital plan and consistent with
65 the federal home loan bank's current capital stock practices applicable to its entire membership.

66 D. Following the appointment of a receiver for an insurer-member, the federal home loan bank shall,
67 within 10 business days after a request from the receiver, provide a process and establish a timeline for
68 each of the following:

69 1. The release of collateral that exceeds the amount required to support secured obligations
70 remaining after any repayment of loans as determined in accordance with the applicable agreements
71 between the federal home loan bank and the insurer-member;

72 2. The release of any of the insurer-member's collateral remaining in the federal home loan bank's
73 possession following repayment of all outstanding secured obligations of the insurer-member in full;

74 3. The payment of fees owed by the insurer-member and the operation of deposits and other accounts
75 of the insurer-member with the federal home loan bank; and

76 4. The possible redemption or repurchase of federal home loan bank stock or excess stock of any
77 class that an insurer-member is required to own.

78 E. Upon request from a receiver, the federal home loan bank shall provide any available options for
79 an insurer-member subject to a delinquency proceeding to renew or restructure a loan to defer
80 associated prepayment fees, subject to market conditions, the term of any loans outstanding to the
81 insurer-member, the applicable policies of the federal home loan bank, and the federal home loan bank's
82 compliance with federal laws and regulations.