

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H

D

HOUSE BILL 440
Committee Substitute Favorable 4/19/17
PROPOSED SENATE COMMITTEE SUBSTITUTE H440-PCS40640-BB-15

Short Title: Federal Home Loan Bank/Insurer Receivership. (Public)

Sponsors:

Referred to:

March 23, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY OBLIGATIONS AND THE RELATIONSHIP BETWEEN A
3 FEDERAL HOME LOAN BANK AND A NORTH CAROLINA INSURANCE
4 COMPANY DURING THE CONSERVATORSHIP AND REHABILITATION
5 PROCESS.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.(a)** G.S. 58-30-10 reads as rewritten:

8 **"§ 58-30-10. Definitions.**

9 For the purposes of this Article only:

- 10 (1) ~~"Alien country" means any Alien country.~~ – Any other jurisdiction not in
11 any state.
- 12 (2) ~~"Ancillary state" means any Ancillary state.~~ – Any state other than a
13 domiciliary state.
- 14 (3) ~~"Court" means the Court.~~ – The Superior Court of Wake County.
- 15 (4) ~~"Creditor" means a Creditor.~~ – A person having any claim, whether matured
16 or unmatured, liquidated or unliquidated, secured or unsecured, absolute,
17 fixed, or contingent.
- 18 (5) ~~"Delinquency proceeding" means any Delinquency proceeding.~~ – Any
19 proceeding instituted against an insurer for the purpose of supervising,
20 rehabilitating, conserving, or liquidating such insurer.
- 21 (6) ~~"Doing business" includes any Doing business.~~ – Includes any of the
22 following acts by insurers, whether effected by mail or otherwise:
23 a. The issuance or delivery of contracts of insurance to persons resident
24 in this State;
25 b. The solicitation of applications for such contracts, or other
26 negotiations preliminary to the execution of such contracts;
27 c. The collection of premiums, membership fees, assessments, or other
28 consideration for such contracts;
29 d. The transaction of matters subsequent to execution of such contracts
30 and arising out of them;
31 e. Operating as an insurer under a license issued by the Department; or
32 f. The purchase of contracts of insurance issued to persons in this State
33 by an assumption agreement.
- 34 (7) ~~"Domestic guaranty association" means the Domestic guaranty association.~~ –
35 The Postassessment Insurance Guaranty Association in Article 48 of this



* H 4 4 0 - P C S 4 0 6 4 0 - B B - 1 5 *

Chapter, as amended; the North Carolina Self-Insurance Security Association in Article 4 of Chapter 97 of the General Statutes; the Life and Accident and Health Insurance Guaranty Association in Article 62 of this Chapter, as amended; or any other similar entity hereafter created by the General Assembly for the payment of claims of insolvent insurers.

(8) ~~"Domiciliary state" means the Domiciliary state. – The state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.~~

(9) ~~"Fair consideration" is Fair consideration. – When given for property or obligation when:~~ means either of the following:

a. In exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or an obligation is incurred or an antecedent debt is ~~satisfied; or~~ satisfied.

b. Such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.

(9a) Federal home loan bank. – A federal home loan bank as defined and established under the federal Home Loan Bank Act, 12 U.S.C. § 1421, et seq.

(10) ~~"Foreign guaranty association" means a Foreign guaranty association. – A guaranty association now in existence in or hereafter created by the legislature of any other state.~~

(11) ~~"Formal delinquency proceeding" means any Formal delinquency proceeding. – Any liquidation or rehabilitation proceeding.~~

(12) ~~"General assets" means all General assets. – All real, personal, or other property that is not specifically mortgaged, pledged, hypothecated, deposited, or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets that are held in trust and on deposit for the security or benefit of all policyholders in more than one state or all policyholders and creditors in more than one state shall be treated as "general assets". No person shall have a claim against general assets unless that claim is in an amount in excess of fifty dollars (\$50.00).~~

(13) ~~"Insolvency" or "insolvent" means that an Insolvency or insolvent. – An insurer is unable to pay its obligations when they are due, or that its admitted assets do not exceed its liabilities plus the greater of (i) any capital and surplus required by law for its organization; or (ii) the total par or stated value of its authorized and issued capital stock. For the purposes of this subdivision, "liabilities" includes reserves required by statute, by Department rules, or by specific requirements imposed by the Commissioner upon a subject company at the time of admission or subsequent thereto, except those reserves that are an allocation of surplus as specified in G.S. 58-65-95.~~

(14) ~~"Insurer" means any Insurer. – An entity that is or should be licensed under Articles 7, 16, 26, 47, 49, 64, 65, or 67 of this Chapter.~~

(14a) Insurer-member. – An insurer that is a member of a federal home loan bank.

- 1 (15) ~~"Preferred claim" means any~~ Preferred claim. – Any claim with respect to
 2 which the provisions of this Article accord priority of payment from the
 3 general assets of the insurer.
- 4 (16) ~~"Receiver" includes~~ Receiver. – Includes a liquidator, rehabilitator, or
 5 conservator, as the context requires.
- 6 (17) ~~"Reciprocal state" means any~~ Reciprocal state. – Any state other than this
 7 State in which in substance and effect the provisions of G.S. 58-30-105(a),
 8 58-30-270, 58-30-275, and 58-30-285 through 58-30-295 are in force, and in
 9 which provisions are in force requiring that the insurance regulator of that
 10 state be the receiver of a delinquent insurer; and in which provisions exist
 11 for the avoidance of fraudulent conveyances and preferential transfers.
- 12 (18) ~~"Secured claim" means any~~ Secured claim. – Any claim secured by
 13 mortgage, trust deed, pledge, deposit as security, escrow, or otherwise; and
 14 includes any claim that has become a lien upon specific assets by reason of
 15 judicial process. "Secured claim" does not include a special deposit claim or
 16 a claim against general assets.
- 17 (19) ~~"Special deposit claim" means any~~ Special deposit claim. – Any claim in
 18 excess of fifty dollars (\$50.00) secured by a deposit made pursuant to statute
 19 for the security or benefit of a limited class or classes of persons, but does
 20 not include any claim secured by general assets.
- 21 (20) ~~"Transfer" includes~~ Transfer. – Includes the sale and every other and
 22 different mode, whether direct or indirect, of disposing of or of parting with
 23 property, an interest therein, or the possession thereof; or of voluntarily
 24 fixing a lien upon property or an interest therein, whether absolutely or
 25 conditionally, by or without judicial proceedings. The retention of a security
 26 title to property delivered to a debtor is a transfer suffered by the debtor."

27 **SECTION 1.(b)** G.S. 58-30-20 reads as rewritten:

28 **"§ 58-30-20. Injunctions and orders.**

29 ...
 30 (c) Notwithstanding any provision in subsections (a) and (b) of this section to the
 31 contrary, after the seventh day following the filing of a delinquency proceeding, a federal home
 32 loan bank shall not be stayed or prohibited from exercising its rights regarding collateral
 33 pledged by an insurer-member. The federal home loan bank exercising its rights regarding
 34 collateral pledged by an insurer-member shall repurchase any outstanding capital stock in
 35 excess of the amount of its stock that the insurer-member is required to hold as a minimum
 36 investment to the extent the federal home loan bank determines in good faith the repurchase is
 37 (i) permissible under applicable law, regulations, obligations arising under regulations, and the
 38 federal home loan bank's capital plan and (ii) consistent with the capital stock practices
 39 currently applicable to the federal home loan bank's entire membership.

40 (d) Within 10 days of the appointment of a receiver for an insurer-member in a
 41 proceeding under this Article, the federal home loan bank shall provide the receiver with a
 42 process and time line for all of the following:

- 43 (1) The release of collateral that exceeds the amount required to support secured
 44 obligations remaining after any repayment of loans as determined under
 45 applicable agreements between the federal home loan bank and the
 46 insurer-member.
- 47 (2) The release of any collateral of the insurer-member remaining in the federal
 48 home loan bank's possession following repayment in full of all outstanding
 49 secured obligations of the insurer-member.
- 50 (3) The payment of fees owed by the insurer-member and the operation,
 51 maintenance, closure, or disposition of deposits and other accounts of the

1 insurer-member as mutually agreed upon by the receiver and federal home
2 loan bank.

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

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

11 **SECTION 1.(c)** Article 30 of Chapter 58 of the General Statutes is amended by
12 adding a new section to read:

13 "**§ 58-30-147. Voidable transfers for federal home loan banks.**

14 (a) The receiver for an insurer-member of a federal home loan bank shall not void any
15 obligation to transfer or transfer of money or other property arising under a federal home loan
16 bank security, pledge, collateral, or guarantee agreement or any other similar arrangement or
17 credit enhancement related to a federal home loan bank security agreement when the agreement
18 or arrangement is made (i) in the ordinary course of business and (ii) in compliance with the
19 applicable federal home loan bank agreement.

20 (b) Notwithstanding subsection (a) of this section, a transfer may be avoided if the
21 transfer is made with intent to hinder, delay, or defraud the insurer-member, the receiver for the
22 insurer-member, existing creditors, or future creditors.

23 (c) Nothing in this section is intended to affect a receiver's rights regarding advances to
24 an insurer-member in delinquency proceedings under 12 C.F.R. § 1266.4."

25 **SECTION 2.** G.S. 58-7-163 reads as rewritten:

26 "**§ 58-7-163. Assets not allowed.**

27 In addition to assets impliedly excluded by the provisions of G.S. 58-7-162, the following
28 expressly shall not be allowed as assets in any determination of the financial condition of an
29 insurer:

- 30 (1) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- 31 (2) Advances (other than policy loans) to officers, directors, and controlling
32 stockholders, whether secured or not, and advances to employees, agents,
33 and other persons on personal security only.
- 34 (3) Stock of the insurer or any material equity therein or loans secured thereby,
35 or any material proportionate interest in the stock acquired or held through
36 the ownership by the insurer of an interest in another firm, corporation, or
37 business unit.
- 38 (4) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- 39 (5) The amount, if any, by which the aggregate book value of investments as
40 carried in the ledger assets of the insurer exceeds the aggregate value of the
41 investments as determined under this Chapter.
- 42 (6) Bonds, notes, or other evidences of indebtedness that are secured by
43 mortgages or deeds of trust that are in default, to the extent of the cost or
44 carrying value that is in excess of the value as determined pursuant to other
45 provisions of this Chapter.
- 46 (7) Repealed by Session Laws 2003-212, s. 7, effective October 1, 2003.
- 47 (8) Certificates of contribution, surplus notes, or other similar evidences of
48 indebtedness, to the extent that admission of these investments results in the
49 double counting of these investments in the reporting entity's balance sheet.
- 50 (9) Any asset that is encumbered in any manner unless the asset is authorized
51 under G.S. 58-7-187 or G.S. 58-7-162(13). For an asset that is used as

1 collateral to secure access to advances from a federal home loan bank, as
2 defined by G.S. 58-30-10(9a), the amount of the asset's par value that
3 exceeds the par amount of any outstanding obligations to the federal home
4 loan bank shall be considered an unencumbered admitted asset."

5 **SECTION 3.** This act becomes effective July 1, 2017.