

1 S.95

2 *(For Consideration by the Senate Committee on Finance)*

3 Senator Cummings moves that the bill be amended by adding a new Sec. 10  
4 and Secs. 11 and 12 to read as follows:

5 Sec. 10. 8 V.S.A. § 7033 is amended to read:

6 § 7033. INJUNCTIONS AND ORDERS

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

11 (1) the transaction of further business;

12 (2) the transfer of property;

13 (3) interference with the receiver or with a proceeding under this  
14 chapter;

15 (4) waste of the insurer's assets;

16 (5) dissipation and transfer of bank accounts;

17 (6) the institution or further prosecution of any actions or proceedings;

18 (7) the obtaining of preferences, judgments, attachments, garnishments,  
19 or liens against the insurer, its assets or its policyholders;

20 (8) the levying of execution against the insurer, its assets or its  
21 policyholders;

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

3           (10) the withholding from the receiver of books, accounts, documents,  
4 or other records relating to the business of the insurer; or

5           (11) any other threatened or contemplated action that might lessen the  
6 value of the insurer’s assets or prejudice the rights of policyholders, creditors,  
7 or shareholders, or the administration of any proceeding under this chapter.

8           (b) The receiver may apply to a court outside the State for the relief  
9 described in subsection (a) of this section.

10           (c) Notwithstanding subsections (a) and (b) of this section, subsection  
11 7054(a) of this title, or any other provision of this chapter to the contrary, no  
12 person, for more than 10 days, shall be restrained, stayed, enjoined, or  
13 prohibited from exercising or enforcing any right or cause of action under any  
14 pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee  
15 agreement or arrangement, or any similar agreement, arrangement, or other  
16 credit enhancement to which a federal home loan bank is a party.

17           (d) A federal home loan bank exercising its rights regarding collateral  
18 pledged by an insurer-member shall, within seven days after receiving a  
19 redemption request made by the insurer-member, repurchase any of the  
20 insurer-member’s outstanding capital stock in excess of the amount the  
21 insurer-member must hold as a minimum investment. The federal home loan

1 bank shall repurchase the excess outstanding capital stock only to the extent  
2 that it determines in good faith that the repurchase is both of the following:

3 (1) permissible under federal laws and regulations and the federal home  
4 loan bank’s capital plan; and

5 (2) consistent with the capital stock practices currently applicable to the  
6 federal home loan bank’s entire membership.

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

11 (1) the release of any collateral held by the federal home loan bank that  
12 exceeds the amount that is required to support the secured obligations of the  
13 insurer-member and that is remaining after any repayment of loans, as  
14 determined under the applicable agreements between the federal home loan  
15 bank and the insurer-member;

16 (2) the release of any collateral of the insurer-member remaining in the  
17 federal home loan bank’s possession following repayment in full of all  
18 outstanding secured obligations of the insurer-member;

19 (3) the payment of fees owed by the insurer-member and the operation,  
20 maintenance, closure, or disposition of deposits and other accounts of the

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

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

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

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

18 Sec. 11. 8 V.S.A. § 7065 is amended to read:

19 § 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

20 (a) Every transfer made or suffered and every obligation incurred by an  
21 insurer within one year prior to the filing of a successful petition for

1 rehabilitation or liquidation under this chapter is fraudulent as to then existing  
2 and future creditors if made or incurred without fair consideration, or with  
3 actual intent to hinder, delay, or defraud either existing or future creditors. A  
4 transfer made or an obligation incurred by an insurer ordered to be  
5 rehabilitated or liquidated under this chapter, which is fraudulent under this  
6 section, may be avoided by the receiver, except as to a person who in good  
7 faith is a purchaser, lienor, or obligee, for a present fair equivalent value, and  
8 except that a purchaser, lienor, or obligee, who in good faith has given a  
9 consideration less than fair for such transfer, lien, or obligation, may retain the  
10 property, lien, or obligation as security for repayment. The Court may, on due  
11 notice, order any such transfer or obligation to be preserved for the benefit of  
12 the estate, and in that event, the receiver shall succeed to and may enforce the  
13 rights of the purchaser, lienor, or obligee.

14 \* \* \*

15 (e) Notwithstanding subsection (a) of this section, section 7066 of this title,  
16 or any other provision of this chapter to the contrary, no receiver or any other  
17 person shall avoid any transfer of, or any obligation to transfer, money or any  
18 other property arising under or in connection with any pledge, security, credit,  
19 collateral, loan, advances, reimbursement, or guarantee agreement or  
20 arrangement, or any similar agreement, arrangement, or other credit  
21 enhancement to which a federal home loan bank, as defined in section 7033 of

1 this title, is a party, that is made, incurred, or assumed prior to or after the  
2 filing of a successful petition for rehabilitation or liquidation under this  
3 chapter, or otherwise would be subject to avoidance under this section or  
4 section 7066 of this title; provided, however, that a transfer may be avoided  
5 under this section or section 7066 of this title if the transfer was made with  
6 actual intent to hinder, delay, or defraud the insurer, a receiver appointed for  
7 the insurer, or existing or future creditors.

8 Sec. 12. 8 V.S.A. § 7067 is amended to read:

9 § 7067. VOIDABLE PREFERENCES AND LIENS

10 (a)(1) A preference is a transfer of any of the property of an insurer to or  
11 for the benefit of a creditor, for or on account of an antecedent debt, made or  
12 suffered by the insurer within one year before the filing of a successful petition  
13 for liquidation under this chapter, the effect of which transfer may be to enable  
14 the creditor to obtain a greater percentage of this debt than another creditor of  
15 the same class would receive. If a liquidation order is entered while the insurer  
16 is already subject to a rehabilitation order, then such transfers shall be deemed  
17 preferences if made or suffered within one year before the filing of the  
18 successful petition for rehabilitation, or within two years before the filing of  
19 the successful petition for liquidation, whichever time is shorter.

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

21 (A) the insurer was insolvent at the time of the transfer of property;

1 (B) the transfer of property was made within four months before the  
2 filing of the petition;

3 (C) the creditor receiving it or to be benefited by it or the creditor's  
4 agent acting with reference to it had, at the time when the transfer of property  
5 was made, reasonable cause to believe that the insurer was insolvent or was  
6 about to become insolvent; or

7 (D) the creditor receiving transferred property was an officer, or any  
8 employee or attorney or other person who was in fact in a position of  
9 comparable influence in the insurer to an officer whether or not he or she held  
10 such position, or any shareholder holding directly or indirectly more than five  
11 per centum of any class of any equity security issued by the insurer, or any  
12 other person, firm, corporation, association, or aggregation of persons with  
13 whom the insurer did not deal at arm's length.

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

