

1 TO THE HONORABLE SENATE:

2 The Committee on Finance to which was referred Senate Bill No. 95  
3 entitled “An act relating to banking and insurance” respectfully reports that it  
4 has considered the same and recommends that the bill be amended as follows:

5 First: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in  
6 subsection (b), by striking out subdivision (1) in its entirety and inserting in  
7 lieu thereof a new subdivision (1) to read as follows:

8 (1) This chapter shall provide coverage to a person specified in  
9 subsection (a) of this section for a policy or contract of direct, nongroup life  
10 insurance, health insurance, which for purposes of this chapter includes health  
11 maintenance organization subscriber contracts and certificates, an annuity, or a  
12 certificate under a direct group policy or contract, and supplemental policies or  
13 contracts to any of these, and for an unallocated annuity contract, in each case,  
14 issued by a member insurer, except as limited by this chapter. An annuity  
15 contract or certificate under a group annuity contract includes a guaranteed  
16 investment contract, guaranteed interest contract, guaranteed accumulation  
17 contract, deposit administration contract, unallocated funding agreement,  
18 allocated funding agreement, structured settlement annuity, annuity issued to  
19 or in connection with a government lottery, and any immediate or deferred  
20 annuity contract.

1        Second: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4173, in  
2        subdivision (b)(2)(K), by striking out the words “an affiliated member insurer”  
3        and inserting in lieu thereof an affiliate of a member insurer

4        Third: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4176, in  
5        subsection (b), in the second sentence, by striking out the word “or” and  
6        inserting in lieu thereof of

7        Fourth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4178, in  
8        subdivision (n)(1)(C)(i), in the second sentence, by striking out the word  
9        “receiver” and inserting in lieu thereof liquidator

10       Fifth: In Sec. 9, 8 V.S.A. chapter 112, §§ 4171–4190, in section 4184, in  
11       subdivision (e)(1), in the second sentence, by striking out the word  
12       “policyholders” and inserting in lieu thereof policyowners

13       Sixth: By adding a new Sec. 10 and Secs. 11 and 12 to read as follows:

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

15       § 7033. INJUNCTIONS AND ORDERS

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

20           (1) the transaction of further business;

21           (2) the transfer of property;

1 (3) interference with the receiver or with a proceeding under this  
2 chapter;

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

4 (5) dissipation and transfer of bank accounts;

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

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

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

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

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

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

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

19 (c) Notwithstanding subsections (a) and (b) of this section, subsection  
20 7054(a) of this title, or any other provision of this chapter to the contrary, no  
21 person, for more than 10 days, shall be restrained, stayed, enjoined, or

1 prohibited from exercising or enforcing any right or cause of action under any  
2 pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee  
3 agreement or arrangement, or any similar agreement, arrangement, or other  
4 credit enhancement to which a federal home loan bank is a party.

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

12 (1) permissible under federal laws and regulations and the federal home  
13 loan bank's capital plan; and

14 (2) consistent with the capital stock practices currently applicable to the  
15 federal home loan bank's entire membership.

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

20 (1) the release of any collateral held by the federal home loan bank that  
21 exceeds the amount that is required to support the secured obligations of the

1 insurer-member and that is remaining after any repayment of loans, as  
2 determined under the applicable agreements between the federal home loan  
3 bank and the insurer-member;

4 (2) the release of any collateral of the insurer-member remaining in the  
5 federal home loan bank's possession following repayment in full of all  
6 outstanding secured obligations of the insurer-member;

7 (3) the payment of fees owed by the insurer-member and the operation,  
8 maintenance, closure, or disposition of deposits and other accounts of the  
9 insurer-member, as mutually agreed upon by the receiver and the federal home  
10 loan bank; and

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

14 (f) Upon the request of a receiver appointed in a proceeding under this  
15 chapter involving a federal home loan bank insurer-member, the federal home  
16 loan bank shall provide to the receiver any available options for the insurer-  
17 member to renew or restructure a loan. In determining which options are  
18 available, the federal home loan bank may consider market conditions, the  
19 terms of any loans outstanding to the insurer-member, the applicable policies  
20 of the federal home loan bank, and the federal laws and regulations applicable  
21 to federal home loan banks.

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

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

6        § 7065. FRAUDULENT TRANSFERS PRIOR TO PETITION

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

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(e) Notwithstanding subsection (a) of this section, section 7066 of this title, or any other provision of this chapter to the contrary, no receiver or any other person shall avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any pledge, security, credit, collateral, loan, advances, reimbursement, or guarantee agreement or arrangement, or any similar agreement, arrangement, or other credit enhancement to which a federal home loan bank, as defined in section 7033 of this title, is a party, that is made, incurred, or assumed prior to or after the filing of a successful petition for rehabilitation or liquidation under this chapter, or otherwise would be subject to avoidance under this section or section 7066 of this title; provided, however, that a transfer may be avoided under this section or section 7066 of this title if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

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

§ 7067. VOIDABLE PREFERENCES AND LIENS

(a)(1) A preference is a transfer of any of the property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made or suffered by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which transfer may be to enable

1 the creditor to obtain a greater percentage of this debt than another creditor of  
2 the same class would receive. If a liquidation order is entered while the insurer  
3 is already subject to a rehabilitation order, then such transfers shall be deemed  
4 preferences if made or suffered within one year before the filing of the  
5 successful petition for rehabilitation, or within two years before the filing of  
6 the successful petition for liquidation, whichever time is shorter.

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

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

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

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

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



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3 (Committee vote: \_\_\_\_\_)

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Senator: \_\_\_\_\_

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FOR THE COMMITTEE