

No. 2014-144

AN ACT

HB 2353

Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as amended, "An act relating to insurance; establishing an insurance department; and amending, revising, and consolidating the law relating to the licensing, qualification, regulation, examination, suspension, and dissolution of insurance companies, Lloyds associations, reciprocal and inter-insurance exchanges, and certain societies and orders, the examination and regulation of fire insurance rating bureaus, and the licensing and regulation of insurance agents and brokers; the service of legal process upon foreign insurance companies, associations or exchanges; providing penalties, and repealing existing laws," in suspension of business - involuntary dissolutions, further providing for definitions, for injunctions and orders, for fraudulent transfers prior to petition and for voidable preferences and liens.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 503 of the act of May 17, 1921 (P.L.789, No.285), known as The Insurance Department Act of 1921, is amended by adding definitions to read:

Section 503. Definitions.—The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Federal Home Loan Bank Act" means the Federal Home Loan Bank Act (47 Stat. 725, 12 U.S.C. § 1421 et seq.).

"FHLBank" means a bank as defined in section 2(1)(A) of the Federal Home Loan Bank Act (47 Stat. 725, 12 U.S.C. § 1422(1)(A)).

"FHLBank security agreement" means any pledge, security, collateral or guarantee agreement or any similar arrangement or credit enhancement in favor of an FHLBank.

* * *

"Insurer-member" means an insurer that is a member of an FHLBank.

* * *

Section 2. Section 505 of the act is amended by adding a subsection to read:

Section 505. Injunctions and Orders.—* * *

(a.1) Notwithstanding subsection (a) or any other provision of this article to the contrary, no FHLBank shall be stayed, enjoined or prohibited from exercising any right or enforcing any obligation under an FHLBank security agreement relating to collateral pledged by an insurer-member to the FHLBank.

* * *

Section 3. Section 528(a) of the act, added December 14, 1977 (P.L.280, No.92), is amended to read:

Section 528. Fraudulent Transfers Prior to Petition.—(a) Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this article is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this article, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value, and except that any purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for such transfer, lien, or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee. *Notwithstanding this subsection or any other provision of this article to the contrary, a receiver shall not avoid a transfer of money or other property arising under or in connection with an FHLBank security agreement that is made before the commencement of a formal delinquency proceeding under this article in the ordinary course of business and in compliance with the FHLBank security agreement unless such transfer was made with actual intent to hinder, delay or defraud the insurer-member, the receiver appointed for the insurer-member or existing or future creditors.*

* * *

Section 4. Section 530 of the act is amended by adding subsections to read:

Section 530. Voidable Preferences and Liens.—* * *

(a.1) *Notwithstanding subsection (a) or any other provision of this article to the contrary, (i) a receiver shall not avoid a transfer of money or other property arising under or in connection with an FHLBank security agreement that is made before the commencement of a formal proceeding under this article in the ordinary course of business and in compliance with the security agreement unless such 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; and (ii) a receiver shall not void a redemption or repurchase of any stock or equity securities which was made by the FHLBank within four months of a formal commencement of the delinquency proceedings or which received prior approval of the receiver.*

(a.2) *Following the appointment of a receiver for an insurer-member and upon request of the receiver, the FHLBank shall, within ten days of such request, provide a process and establish timing for all of the following:*

(1) *The release of collateral that exceeds the lending value, as determined in accordance with the FHLBank security agreement, required to support secured obligations remaining after any repayment of advances.*

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

(3) The payment of fees and the operation of deposits and other accounts with the FHLBank.

(4) The possible redemption or repurchase of FHLBank stock or excess stock of any class that an insurer-member is required to own.

(a.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 Federal Home Loan Bank Act and corresponding regulations permit.

(a.4) Nothing in this section shall affect the receiver's rights pursuant to section 12 CFR § 1266.4 (relating to limitations on access to advances) regarding advances to an insurer-member in delinquency proceedings.

* * *

Section 5. This act shall take effect immediately.

APPROVED—The 14th day of October, A.D. 2014

TOM CORBETT