

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 402
Finance

(Senator Middleton)

Insurance - Impaired Entities - Delinquency Proceedings

This bill makes various changes to the delinquency proceedings process for an impaired insurer who is an insurer-member of a federal home loan bank (FHLB).

The bill takes effect June 1, 2017.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: The bill does not affect local governmental operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Insurer-member” means an insurer that is a member of an FHLB.

The bill prohibits the Insurance Commissioner, after the seventh day following the filing of a delinquency proceeding for an insurer-member, from staying an FHLB or prohibiting it from exercising its rights regarding collateral pledged by the insurer-member. An FHLB that exercises its rights in such a manner must repurchase any outstanding capital stock (1) that exceeds the amount of stock the insurer-member is required to hold as a minimum investment and (2) to the extent the FHLB, in good faith, determines the repurchase to be legally permissible and consistent with its current capital stock practices.

After the appointment of a receiver for an insurer and within 10 business days following a request from the receiver, an FHLB must establish a process and timeline for:

- the release of collateral that exceeds the amount required to support secured obligations remaining after any repayment of loans;
- the release of any of the insurer-member's collateral remaining in the FHLB's possession after full repayment of all outstanding secured obligations of the insurer-member;
- the payment of any fees owed by the insurer-member to the FHLB;
- the operation of deposits and other accounts of the insurer-member with the FHLB; and
- the possible redemption or repurchase of FHLB stock or excess stock of any class that an insurer-member is required to own.

If requested to do so by the receiver for an insurer-member, the FHLB must provide any options available to the insurer-member to renew or restructure a loan, subject to market conditions, the terms of any outstanding loans, the FHLB's policies, and the FHLB's compliance with federal law.

The receiver for an insurer-member may not void any transfer of, or any obligation to transfer, money or any other property arising under or in connection with (1) an FHLB security agreement; (2) a pledge, a security, collateral, or a guarantee agreement; or (3) any other similar arrangement. The receiver may void a transfer if the transfer was made with intent to hinder, delay, or defraud the insurer-member, the receiver, or existing or future creditors.

The bill does not affect a receiver's rights related to advances to an insurer-member in delinquency proceedings under federal law.

Current Law: As the primary regulator of the insurance industry in the State, the Maryland Insurance Administration (MIA) performs actuarial evaluations, financial audits, financial examinations, and market conduct examinations to ensure that insurers remain financially solvent and comply with State laws. Depending on numerous factors, including the size of an insurer and the type of insurance it sells, an insurer domiciled in the State is required to maintain specified reserves and capital assets based on the premiums it collects and its outstanding policies, contracts, annuities, and benefit agreements.

MIA is authorized to require an insurer to take certain actions when it determines that the insurer's finances are at risk. For example, if the Commissioner determines that an insurer is in a financially hazardous condition, it may require the insurer to take numerous corrective actions including the reduction of present and potential liability through

reinsurance; the reduction, suspension, or limitation of business being accepted or renewed; or the adoption of certain governance policies. Under some circumstances, MIA is authorized to apply to the court for an order that conserves, rehabilitates, or liquidates and dissolves an insurer.

After an application by the Insurance Commissioner, a court may issue an order that directs the Commissioner to seize and take control of all or part of (1) the property, books, accounts, documents, and other records of an insurer and (2) the premises the insurer occupies for the transaction of its business. The court must specify the duration of a seizure order and if the Commissioner fails to commence a delinquency proceeding after having a reasonable opportunity to do so, the court must vacate the seizure order.

During a delinquency proceeding, the court may issue an injunction or order to prevent (1) interference with the Commissioner or the proceeding; (2) waste of the assets of the insurer; (3) commencement or prosecution of an action; (4) obtaining of preference, judgments, attachments, or other liens; or (5) levy against the insurer or all or part of its assets.

Background: Created by the U.S. Congress, there are 11 FHLBs in the United States. Each FHLB is structured as a privately member-owned cooperative for the purpose of providing reliable liquidity (low-cost flexible lending) to its members; members, in turn lend to consumers and businesses for housing finance and community investments. Members include commercial banks, credit unions, community development financial institutions, and insurance companies. The FHLB System has close to 350 insurance company members. The FHLB that covers Maryland is located in Atlanta. On its website, FHLB Atlanta reports that it offers financing, community development grants, and other banking services to help member financial institutions make affordable home mortgages and provide economic development credit to neighborhoods and communities.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Labor, Licensing, and Regulation; Maryland Insurance Administration; Department of Legislative Services

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