

By Senator Gruters

23-01617-22

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1 A bill to be entitled
2 An act relating to federal home loan banks; amending
3 s. 626.9541, F.S.; conforming cross-references;
4 amending s. 631.011, F.S.; defining the terms "federal
5 home loan bank" and "insurer-member"; conforming
6 cross-references; amending s. 631.025, F.S.;
7 conforming a cross-reference; amending s. 631.041,
8 F.S.; conforming a cross-reference; providing
9 construction; requiring federal home loan banks to
10 repurchase certain stock under certain circumstances;
11 requiring federal home loan banks to provide specified
12 processes and timelines within a specified timeframe;
13 requiring federal home loan banks to provide options
14 for insurer-members to renew or restructure loans
15 under certain circumstances; amending s. 631.261,
16 F.S.; prohibiting receivers for insurer-members from
17 voiding certain transfers; providing an exception;
18 providing construction; amending s. 817.2341, F.S.;
19 conforming cross-references; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Paragraph (w) of subsection (1) of section
25 626.9541, Florida Statutes, is amended to read:

26 626.9541 Unfair methods of competition and unfair or
27 deceptive acts or practices defined.—

28 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
29 ACTS.—The following are defined as unfair methods of competition

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30 and unfair or deceptive acts or practices:

31 (w) *Soliciting or accepting new or renewal insurance risks*
32 *by insolvent or impaired insurer prohibited; penalty.-*

33 1. Whether or not delinquency proceedings as to the insurer
34 have been or are to be initiated, but while such insolvency or
35 impairment exists, no director or officer of an insurer, except
36 with the written permission of the office, shall authorize or
37 permit the insurer to solicit or accept new or renewal insurance
38 risks in this state after such director or officer knew, or
39 reasonably should have known, that the insurer was insolvent or
40 impaired. "Impaired" includes impairment of capital or surplus,
41 as defined in s. 631.011 ~~s. 631.011(12) and (13)~~.

42 2. Any such director or officer, upon conviction of a
43 violation of this paragraph, is guilty of a felony of the third
44 degree, punishable as provided in s. 775.082, s. 775.083, or s.
45 775.084.

46 Section 2. Present subsections (9) through (15) and (16)
47 through (23) of section 631.011, Florida Statutes, are
48 redesignated as subsections (10) through (16) and (18) through
49 (25), respectively, new subsections (9) and (17) are added to
50 that section, and present subsections (14) and (16) of that
51 section are amended, to read:

52 631.011 Definitions.—For the purpose of this part, the
53 term:

54 (9) "Federal home loan bank" means a federal home loan bank
55 established under the Federal Home Loan Bank Act, 12 U.S.C. s.
56 1421, et seq.

57 ~~(15)(14)~~ "Insolvency" means that all the assets of the
58 insurer, if made immediately available, would not be sufficient

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59 to discharge all its liabilities or that the insurer is unable
60 to pay its debts as they become due in the usual course of
61 business. When the context of any provision of this code so
62 indicates, insolvency also includes and is defined as
63 "impairment of surplus," as defined in subsection (14)~~(13)~~, and
64 "impairment of capital," as defined in subsection (13)~~(12)~~.

65 (17) "Insurer-member" means an insurer who is a member of a
66 federal home loan bank.

67 (18)~~(16)~~ "Liabilities," as used in subsections (13)~~(12)~~ and
68 (15)~~(14)~~, means all liabilities, including those specifically
69 required in s. 625.041.

70 Section 3. Section 631.025, Florida Statutes, is amended to
71 read:

72 631.025 Persons subject to this part.—Delinquency
73 proceedings authorized by this part may be initiated against any
74 insurer, as defined in s. 631.011 ~~s. 631.011(15)~~, if the
75 statutory grounds are present as to that insurer, and the court
76 may exercise jurisdiction over any person required to cooperate
77 with the department and office pursuant to s. 631.391 and over
78 all persons made subject to the court's jurisdiction by other
79 provisions of law. Such persons include, but are not limited to:

80 (1) A person transacting, or that has transacted, insurance
81 business in or from this state and against whom claims arising
82 from that business may exist now or in the future.

83 (2) A person purporting to transact an insurance business
84 in this state and any person who acts as an insurer, transacts
85 insurance, or otherwise engages in insurance activities in or
86 from this state, with or without a certificate of authority or
87 proper authority from the department or office, against whom

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88 claims arising from that business may exist now or in the
89 future.

90 (3) An insurer with policyholders resident in this state.

91 (4) All other persons organized or in the process of
92 organizing with the intent to transact an insurance business in
93 this state.

94 Section 4. Present subsections (2) through (6) of section
95 631.041, Florida Statutes, are redesignated as subsections (3)
96 through (7), respectively, a new subsection (2) is added to that
97 section, and subsection (1) of that section is amended, to read:

98 631.041 Automatic stay; relief from stay; injunctions.—

99 (1) An application or petition under s. 631.031 operates as
100 a matter of law as an automatic stay applicable to all persons
101 and entities, other than the receiver and the office, which
102 shall be permanent and survive the entry of an order of
103 conservation, rehabilitation, or liquidation, and which shall
104 prohibit:

105 (a) The commencement or continuation of judicial,
106 administrative, or other action or proceeding against the
107 insurer or against its assets or any part thereof;

108 (b) The enforcement of a judgment against the insurer or an
109 affiliate obtained either before or after the commencement of
110 the delinquency proceeding;

111 (c) Any act to obtain possession of property of the
112 insurer;

113 (d) Any act to create, perfect, or enforce a lien against
114 property of the insurer, except that a secured claim as defined
115 in s. 631.011 ~~s. 631.011(21)~~ may proceed under s. 631.191 after
116 the order of liquidation is entered;

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117 (e) Any act to collect, assess, or recover a claim against
118 the insurer, except claims as provided for under this chapter;
119 and

120 (f) The setoff or offset of any debt owing to the insurer,
121 except offsets as provided in s. 631.281.

122 (2) (a) After the seventh day following the filing of an
123 application or a petition under s. 631.031, a stay does not
124 apply to or prohibit a federal home loan bank's exercise of its
125 rights regarding collateral pledged by an insurer-member.

126 (b) If a federal home loan bank exercises its rights
127 regarding collateral pledged by an insurer-member who is subject
128 to a delinquency proceeding pursuant to s. 631.031, the federal
129 home loan bank must repurchase any outstanding capital stock in
130 excess of the amount of federal home loan bank stock which the
131 insurer-member is required to hold as a minimum investment, to
132 the extent the federal home loan bank in good faith determines
133 the repurchase to be permissible under applicable laws,
134 regulations, regulatory obligations, and the federal home loan
135 bank's capital plan and to be consistent with the federal home
136 loan bank's current capital stock practices applicable to its
137 entire membership.

138 (c) Following the appointment of a receiver for an insurer-
139 member, the federal home loan bank shall, within 10 business
140 days after a request from the receiver, provide a process and
141 establish a timeline for all of the following:

142 1. The release of collateral that exceeds the amount
143 required to support secured obligations remaining after any
144 repayment of loans, as determined in accordance with the
145 applicable agreements between the federal home loan bank and the

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146 insurer-member.

147 2. The release of any of the insurer-member's collateral
148 remaining in the federal home loan bank's possession following
149 repayment in full of all outstanding secured obligations of the
150 insurer-member.

151 3. The payment of fees the insurer-member owes and the
152 operation of deposits and other accounts of the insurer-member
153 with the federal home loan bank.

154 4. The possible redemption or repurchase of federal home
155 loan bank stock or excess stock of any class which an insurer-
156 member is required to own.

157 (d) Upon request from a receiver, the federal home loan
158 bank shall provide any available options for an insurer-member
159 subject to a delinquency proceeding to renew or restructure a
160 loan to defer associated prepayment fees, subject to market
161 conditions, the terms of any loans outstanding to the insurer-
162 member, the applicable policies of the federal home loan bank,
163 and the federal home loan bank's compliance with federal laws
164 and regulations.

165 Section 5. Paragraph (c) is added to subsection (1) of
166 section 631.261, Florida Statutes, to read:

167 631.261 Voidable transfers.-

168 (1)

169 (c) The receiver for an insurer-member may not void any
170 transfer of, or any obligation to transfer, money or any other
171 property arising under or in connection with any federal home
172 loan bank security agreement; any pledge, security, collateral,
173 or guarantee agreement; or any other similar arrangement or
174 credit enhancement relating to a federal home loan bank security

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175 agreement made in the ordinary course of business and in
176 compliance with the applicable federal home loan bank agreement.
177 However, a transfer may be avoided under this section if the
178 transfer was made with intent to hinder, delay, or defraud the
179 insurer-member, the receiver for the insurer-member, or existing
180 or future creditors. This section does not affect a receiver's
181 rights regarding advances to an insurer-member in delinquency
182 proceedings pursuant to 12 C.F.R. s. 1266.4.

183 Section 6. Paragraph (b) of subsection (2) and paragraph
184 (b) of subsection (3) of section 817.2341, Florida Statutes, are
185 amended to read:

186 817.2341 False or misleading statements or supporting
187 documents; penalty.—

188 (2)

189 (b) If the false entry of a material fact is made with the
190 intent to deceive any person as to the impairment of capital, as
191 defined in s. 631.011 ~~s. 631.011(12)~~, of the insurer or entity
192 or is the significant cause of the insurer or entity being
193 placed in conservation, rehabilitation, or liquidation by a
194 court, the person commits a felony of the first degree,
195 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

196 (3)

197 (b) If the material false statement or report or the
198 material overvaluation is made with the intent to deceive any
199 person as to the impairment of capital, as defined in s. 631.011
200 ~~s. 631.011(12)~~, of an insurer or entity organized pursuant to
201 chapter 624 or chapter 641, or is the significant cause of the
202 insurer or entity being placed in receivership by a court, the
203 person commits a felony of the first degree, punishable as

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204 provided in s. 775.082, s. 775.083, or s. 775.084.

205 Section 7. This act shall take effect July 1, 2022.