

COMMITTEE ON BUDGET, APPROPRIATIONS,
AND FINANCE

04/11/2023-REPORTED OUT TO THE FLOOR

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BILL NO. 35-0026

Thirty-Fifth Legislature of the Virgin Islands

February 27, 2023

An Act amending title 22 Virgin Islands Code relating to insurers becoming members of a Federal Home Loan Bank and matters relating thereto

PROPOSED BY: Senator Donna A. Frett-Gregory
Co-sponsor: Marise C. James

1 *Be it enacted by the Legislature of the Virgin Islands:*

2 **SECTION 1.** Title 22 Virgin Islands Code is amended in the following instances:

3 (a) In chapter 1, add section 6a. to read as follows:

4 **“§6a. Federal Home Loan Bank and Insurer- member defined**

5 (a) “Federal Home Loan Bank,” when used in this title means an institution
6 chartered under the Federal Home Loan Bank Act of 1932, 12 U.S.C.§§ 1421, et seq. (the
7 “Federal Home Loan Bank Act”).

8 (b) “Insurer-member” when used in this title means an Insurer that is a member
9 of a Federal Home Loan Bank.”

10 (b) In chapter 9, add section 230c. that reads as follows:

1 **“§230c. Membership in Federal Home Loan Bank**

2 (a) Insurers duly organized under the laws of any State, eligible for membership,
3 may become a member of a Federal Home Loan Bank and upon becoming a member,
4 may:

5 (1) purchase stock in; obtain advances from; sell loans to; pledge collateral
6 to; and perform such acts which are necessary and required to make available to it
7 all the advantages and privileges offered by such Federal Home Loan Bank to the
8 extent provided by and in accordance with the Federal Home Loan Bank Act; and

9 (2) invest in the debt obligations of the Federal Home Loan Banks or of the
10 Federal Home Loan Bank of New York or its legal successor.

11 (b) For purposes of this section, the term “State,” in addition to the States of the
12 United States, includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands,
13 American Samoa, and the Commonwealth of the Northern Mariana Islands.”

14 (c) In chapter 10, section 246, strike “All” at the beginning of the first sentence and
15 insert “Except as provided in section 1256 of this title, all”.

16 (d) In chapter 23, section 553, insert “, to ownership of shares of stock in or advances
17 from a Federal Home Loan Bank” after the second occurrence of “United States” in the second
18 sentence.

19 (e) Chapter 51 is amended in the following instances:

20 (1) Section 1254 is amended by:

21 (A) Adding a new subsection (b) that reads:

22 “(b) The Commissioner has the authority to enter into such contracts
23 as may be needed for the execution of the order of rehabilitation and to affirm

1 or disavow any contract to which the insurer is a party; except that the
2 Commissioner does not have the authority to disavow, reject, or repudiate a
3 Federal Home Loan Bank security agreement, pledge, collateral or guarantee
4 agreement, or other similar arrangement or credit enhancement relating to a
5 security agreement to which a Federal Home Loan Bank is a party, except if
6 it was made with actual intent to hinder, delay, or defraud either existing or
7 future creditors.”; and

8 (B) Re-designating the affected subsections accordingly.

9 (2) In section 1256, add subsections (c) through (f) that read as follows:

10 “(c) Following the appointment of the Commissioner, as receiver,
11 rehabilitator, conservator or liquidator for an Insurer-member, and upon request of
12 the Commissioner, the Federal Home Loan Bank must, within ten days of the
13 request, provide a process and establish the timing for:

14 (1) The release of any collateral held by the Federal Home Loan Bank
15 that exceeds the amount that is required to support the secured obligations of
16 the Insurer-member and that remains after any repayment of loans, as
17 determined under the applicable agreements between the Federal Home Loan
18 Bank and the Insurer-member;

19 (2) The release of any collateral remaining in the Federal Home Loan
20 Bank's possession following repayment in full of all outstanding secured
21 obligations of the Insurer-member;

22 (3) The payment of fees owed by the Insurer-member and the
23 operation, maintenance, closure, or disposition of deposits and other accounts

1 of the Insurer-member, as mutually agreed upon by the Commissioner and
2 the Federal Home Loan Bank; and

3 (4) Any redemption or repurchase of Federal Home Loan Bank stock
4 or excess stock of any class that an Insurer-member is required to own.

5 (d) Upon the request of the Commissioner, as receiver, rehabilitator, conservator
6 or liquidator of an Insurer-member, the Federal Home Loan Bank must provide any
7 available options for the Insurer-member to renew or restructure an advance to defer
8 associated prepayment fees; subject to market conditions, the terms of the advances
9 outstanding to the Insurer-member, the applicable policies of the Federal Home Loan
10 Bank, and compliance with the Federal Home Loan Bank Act and corresponding
11 regulations.

12 (e) The enumeration of the powers and authority of the Commissioner in this title
13 is not construed as a limitation upon the Commissioner and does not exclude the right to
14 take other actions or engage in other acts not specifically enumerated or otherwise
15 provided for to the extent necessary or appropriate for the accomplishment of or in aid of
16 the liquidation purposes.

17 (f) Notwithstanding subsections (c), (d) and (e) of this section and any other
18 provision of this title, a Federal Home Loan Bank shall not be enjoined, or prohibited
19 from exercising or enforcing any right or cause of action regarding collateral pledged
20 under a security agreement or under any pledge, collateral or guarantee agreement, or
21 other similar arrangement or credit enhancement relating to a security agreement to which
22 the Federal Home Loan Bank is a party; except that a transfer may be voided under this

1 section if it was made with actual intent to hinder, delay, or defraud either existing or
2 future creditors.”

3 (f) In section 1276, add subsections (d) and (e) that read as follows:

4 “(d) Notwithstanding subsections (a), (b) and (c) of this section, and any other
5 provision of this title to the contrary, the Commissioner, as receiver, rehabilitator,
6 conservator or liquidator, may not disavow, reject, repudiate, stay, or enjoin, any Federal
7 Home Loan Bank security agreement, or any pledge, collateral or guarantee agreement or
8 any other similar arrangement or credit enhancement relating to such Federal Home Loan
9 Bank security agreement unless it was made with actual intent to hinder, delay, or defraud
10 either existing or future creditors.

11 (e) This section does not affect the Commissioner’s rights regarding advances to
12 an Insurer-member in delinquency proceedings under 12 CFR §1266.4.”

13 **BILL SUMMARY**

14 The purpose of this bill is to amend several sections of title 22 of the Virgin Islands Code
15 to enable Virgin Islands insurers to become members of a Federal Home Loan Bank, which
16 enables insurers to reduce the cost of homeowners insurance to Virgin Islands homeowners.

17 The Federal Home Loan Bank system is part of a system of 11 regional banks (the
18 “Federal Home Loan Banks” or “FHLBs”) that provide federal loans to promote the housing
19 sector. After the Great Depression, the FHLBs were created under the Federal Home Loan Bank
20 Act of 1932, 12 U.S.C. §§ 1421, et seq., as Government Sponsored Entities (“GSE”), to support
21 mortgage home loans, low-income housing development, and community investment. The
22 FHLBs are overseen by the Federal Housing Finance Agency (“FHFA”), which ensures that
23 the FHLBs operate in a financially secure and sound manner and carry out their home finance
24 mission. The Federal Home Loan Bank of New York (“FHLBNY”) covers the region which
25 includes New York, New Jersey, Puerto Rico and the Virgin Islands, and at present serves 332-
26 member financial institutions and insurance companies in said region.

27 Each FHLB is a separate cooperative and is owned by its members. The members, who
28 own shares in the FHLB, are made up of commercial banks, credit unions and insurance
29 companies. Congress designed the FHLBs with certain characteristics to provide a source of
30 funding to member banks and insurers, allowing them to raise funds at low cost so that they in

1 turn can extend affordable credit, insurance, and other financial products to consumers, thus
2 helping the communities they serve. One of the main purposes of the Federal Home Loan Banks
3 is to provide advances (loans) to its members, both banks and insurance companies. Insurance
4 companies generally use these advances as a source of additional liquidity when needed (for
5 example, after a catastrophic event when the number of simultaneous insurance claims
6 increases). It is, however, required that these advances or loans be fully guaranteed or
7 collateralized by one or more specific types of guarantees and assets of its members.

8 FHLB member insurance companies are those insurance companies that meet the specific
9 financial condition and other eligibility requirements. This legislation confirms that Virgin
10 Islands insurers may become members of a FHLB.

11 In the event of the bankruptcy of a bank (“receivership”), in accordance with existing
12 federal banking law, FHLB loans are afforded a special protection. Under federal law regarding
13 federally insured depositors, funding provided by FHLBs is not subject to “stay” and voidable
14 transfer provisions.

15 However, the insolvency of an insurer is not governed by federal law, but rather, by the
16 insurance insolvency statutes in each of the states and territories. During 2012 and 2013, a
17 subgroup of the National Association of Insurance Commissioners (NAIC) conducted a study
18 of the legislation proposed by the FHLB including the FHLB’s views as well as the views of
19 state insurance regulators and receivers. The study resulted in a report to the NAIC Receivership
20 and Insolvency (E) Task Force dated November 18, 2013 (the “NAIC Report”), setting forth
21 specific recommendations for statutory language to amend the stay and voidable preference
22 provisions in state insurance insolvency statutes. To date, 22 states have adopted statutes
23 implementing the recommendations set forth in the NAIC Report.

24 In the Virgin Islands, insurance company insolvencies are governed by title 22 of the
25 Virgin Islands Code. The purpose of this legislation is to amend title 22 of the Virgin Islands
26 Code in order to align the Virgin Islands law with the federal standards for insurance companies
27 recommended in the NAIC Report. Specifically, this legislation modifies the insolvency legal
28 provisions of Virgin Islands insurance companies with respect to “stays” and “voidable
29 transfers” with respect to FHLBs exclusively and only with regard to insurance companies that
30 are members of an FHLB.

31 These amendments would prevent the Commissioner of Insurance as receiver,
32 rehabilitator or liquidator, from overriding collateral preferences pledged to FHLBs in an
33 insolvency of an insurance company, except in those cases where such preferences have been
34 fraudulently obtained. This would allow FHLBs to lower collateral requirements, which may
35 lead to an increase in FHLB transactions with member insurance companies. These changes
36 only apply to FHLB insurer members and will only apply to guarantees pledged in the ordinary
37 course of business by FHLB member insurance companies. They do not prevent the
38 administrator, rehabilitator or the liquidator from imposing suspensions or canceling transfers
39 in cases of fraud or misconduct.

1 Additionally, the amendments provide for an orderly process for the FHLBs to work with
2 the Commissioner, as receiver, conservator, rehabilitator or liquidator, to assist troubled
3 insurance companies and act as a resource to assist the trustee with an orderly liquidation or
4 rehabilitation of the troubled insurance company, including facilitating options available for the
5 troubled insurance company to renew or restructure advances and possible redemption or
6 repurchase of shares of the FHLBs. In the event of potential insolvency, FHLBs have been the
7 only institutions willing and able to provide liquidity to troubled insurance companies.

8 This legislation provides certainty regarding the rights and obligations of the FHLB in an
9 insolvency of an insurer member and may lower the collateral requirements of the FHLB for
10 those insurance companies authorized to conduct business in the Virgin Islands who are
11 members of FHLBs.

12 This legislation does not create a special creditor preference for FHLBs. The standards of
13 secured loans and the perfection of collateral under the Virgin Islands Uniform Commercial
14 Code (“UCC”) have not changed. The order of distribution of assets of the insolvent insurer has
15 not been amended. This legislation prevents the administrator from retaining collateral that was
16 awarded to the FHLB under valid collateral agreements, in the ordinary course of business, and
17 that was perfected by the FHLB under the UCC.

18 The Commissioner also benefits because the bill provides for a coordinated dialogue
19 between the Commissioner as administrator, and the FHLB to maintain the necessary liquidity
20 for troubled insurance companies. This can reduce the risk of ultimate bankruptcy of the
21 insurance company under receivership and may provide the Commissioner as administrator
22 with additional time and options to develop strategies that may save the troubled insurer from
23 liquidation or reduce receivership costs and costs to the guaranty associations and the insurance
24 purchasing public.

25 Insurance companies that are members of a FHLB also benefit from the bill since the
26 FHLB would be in a better position to provide more favorable loan terms to member insurers.
27 The types of collateral that may be used for advances could also be expanded. An insolvent
28 member insurance company would benefit because the bill requires the FHLB to work with the
29 trustee to assist, to the extent possible, in improving the insurer’s insolvency condition.

30 Virgin Islands insurance companies have the statutory authority to become members of
31 the Federal Home Loan Bank pursuant to 12 U.S.C.S. § 1424, which provides that eligible
32 insurance companies may become members of an FHLB. 9 V.I.C. §282 authorizes associations
33 to become members of the Federal Home Loan Bank system and receive the benefits of FHLB
34 membership. However, the term “Associations” as used in 9 V.I.C. §282 refers to cooperative
35 savings and loan associations only and does not cover insurance companies. Title 22 of the
36 Virgin Islands Code does not contain any definition or references to, or authorizations of
37 insurance company membership with a FHLB. Since title 22 of the Virgin Islands Code is silent
38 as to membership with an FHLB, a definition of FHLB is added in chapter 1 as section 6a., and
39 a new section is added to chapter 9 as section 230c. to explicitly authorize insurance companies
40 to become members of an FHLB and exercise all rights and powers available to members of an

1 FHLB, and defines the permitted business of an Insurer with respect to its membership with an
2 FHLB.

3 With respect to insolvency and receivership proceedings, title 22 of the Virgin Islands
4 Code, chapter 51 outlines rehabilitation and liquidation powers, orders and procedures. While
5 the Commissioner’s abilities, in the event of rehabilitation or liquidation of an insolvent insurer,
6 are sweeping, there is nothing specifically addressing or exempting an FHLB from stays and
7 voidable transfers for collateral pledged to an FHLB by an insolvent insurance company
8 member or to establish an orderly process for an FHLB to work with a receiver. In order to
9 clarify voidable preference and stays with respect to an FHLB, consistent with NAIC guidance,
10 sections 246, 553, 1254, 1256 and 1276 of title 22 of the Virgin Islands Code are amended.

11 **BR23-0004/January 19, 2023**

12 [..\..\..\AMENDS\35th Legislature\FRETT-GREGORY, DONNA A\Amendment 35-](#)
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