

COMMITTEE ON BUDGET, APPROPRIATIONS,  
AND FINANCE

**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

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**PROPOSED BY:** Senator Donna A. Frett-Gregory

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

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

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

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

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

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

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

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

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

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

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

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

13 (c) In chapter 10, section 246, strike “All” at the beginning of the first sentence and  
14 insert “Except as provided in section 1254 of this title, all”.

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

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

19 (1) Section 1254 is amended by:

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

21 “(b) The Commissioner has the authority to enter into such contracts  
22 as may be needed for the execution of the order of rehabilitation and to affirm  
23 or disavow any contract to which the insurer is a party; except that the  
24 Commissioner does not have the authority to disavow, reject, or repudiate a

1 Federal Home Loan Bank security agreement, pledge, collateral or guarantee  
2 agreement, or other similar arrangement or credit enhancement relating to a  
3 security agreement to which a Federal Home Loan Bank is a party, except if  
4 it was made with actual intent to hinder, delay, or defraud either existing or  
5 future creditors.”; and

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

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

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

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

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

20 (3) The payment of fees owed by the Insurer-member and the  
21 operation, maintenance, closure, or disposition of deposits and other accounts  
22 of the Insurer-member, as mutually agreed upon by the Commissioner and  
23 the Federal Home Loan Bank; and

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

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

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

16                  (f) Notwithstanding subsections (c), (d) and (e) of this section and any other  
17                  provision of this title, a Federal Home Loan Bank shall not be enjoined, or prohibited  
18                  from exercising or enforcing any right or cause of action regarding collateral pledged  
19                  under a security agreement or under any pledge, collateral or guarantee agreement, or  
20                  other similar arrangement or credit enhancement relating to a security agreement to which  
21                  the Federal Home Loan Bank is a party; except that a transfer may be voided under this  
22                  section if it was made with actual intent to hinder, delay, or defraud either existing or  
23                  future creditors.”

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



1 FHLB member insurance companies are those insurance companies that meet the specific  
2 financial condition and other eligibility requirements. This legislation confirms that Virgin  
3 Islands insurers may become members of a FHLB.  
4

5 In the event of the bankruptcy of a bank (“receivership”), in accordance with existing  
6 federal banking law, FHLB loans are afforded a special protection. Under federal law regarding  
7 federally insured depositors, funding provided by FHLBs is not subject to “stay” and voidable  
8 transfer provisions.  
9

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

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

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

38 Additionally, the amendments provide for an orderly process for the FHLBs to work with  
39 the Commissioner, as administrator, conservator, rehabilitator or liquidator, to assist troubled  
40 insurance companies and act as a resource to assist the trustee with an orderly liquidation or  
41 rehabilitation of the troubled insurance company, including facilitating options available for the  
42 troubled insurance company to renew or restructure advances and possible redemption or  
43 repurchase of shares of the FHLBs. In the event of potential insolvency, FHLBs have been the  
44 only institutions willing and able to provide liquidity to troubled insurance companies.  
45

46 This legislation provides certainty regarding the rights and obligations of the FHLB in an  
47 insolvency of an insurer member and may lower the collateral requirements of the FHLB for

1 those insurance companies authorized to conduct business in the Virgin Islands who are  
2 members of FHLBs.

3  
4 This legislation does not create a special creditor preference for FHLBs. The standards  
5 of secured loans and the perfection of collateral under the Virgin Islands Uniform Commercial  
6 Code (“UCC”) have not changed. The order of distribution of assets of the insolvent insurer  
7 has not been amended. This legislation prevents the administrator from retaining collateral that  
8 was awarded to the FHLB under valid collateral agreements, in the ordinary course of business,  
9 and that was perfected by the FHLB under the UCC.

10  
11 The Commissioner also benefits because the bill provides for a coordinated dialogue  
12 between the Commissioner as administrator, and the FHLB to maintain the necessary liquidity  
13 for troubled insurance companies. This can reduce the risk of ultimate bankruptcy of the  
14 insurance company under receivership and may provide the Commissioner as administrator  
15 with additional time and options to develop strategies that may save the troubled insurer from  
16 liquidation or reduce receivership costs and costs to the guaranty associations and the insurance  
17 purchasing public.

18  
19 Insurance companies that are members of a FHLB also benefit from the bill since the  
20 FHLB would be in a better position to provide more favorable loan terms to member insurers.  
21 The types of collateral that may be used for advances could also be expanded. An insolvent  
22 member insurance company would benefit because the bill requires the FHLB to work with the  
23 trustee to assist, to the extent possible, in improving the insurer’s insolvency condition.

24  
25 Virgin Islands insurance companies have the statutory authority to become members of  
26 the Federal Home Loan Bank pursuant to 12 U.S.C.S. § 1424, which provides that eligible  
27 insurance companies may become members of an FHLB. 9 V.I.C. §282 authorizes associations  
28 to become members of the Federal Home Loan Bank system and receive the benefits of FHLB  
29 membership. However, the term “Associations” as used in 9 V.I.C. §282 refers to cooperative  
30 savings and loan associations only and does not cover insurance companies. Title 22 of the  
31 Virgin Islands Code does not contain any definition of, references to, or authorizations of  
32 insurance company membership with a FHLB. Since title 22 of the Virgin Islands Code is  
33 silent as to membership with an FHLB, a definition of FHLB is added in chapter 1 as section  
34 6a., and a new section is added to chapter 9 as section 230c. to explicitly authorize insurance  
35 companies to become members of an FHLB and exercise all rights and powers available to  
36 members of an FHLB, and defines the permitted business of an Insurer with respect to its  
37 membership with an FHLB.

38  
39 With respect to insolvency and receivership proceedings, title 22 of the Virgin Islands  
40 Code, chapter 51 outlines rehabilitation and liquidation powers, orders and procedures. While  
41 the Commissioner’s abilities, in the event of rehabilitation or liquidation of an insolvent insurer,  
42 are sweeping, there is nothing specifically addressing or exempting an FHLB from stays and  
43 voidable transfers for collateral pledged to an FHLB by an insolvent insurance company  
44 member or to establish an orderly process for an FHLB to work with a receiver. In order to  
45 clarify voidable preference and stays with respect to an FHLB, consistent with NAIC guidance,  
46 sections 246, 553, 1254, 1256 and 1276 of title 22 of the Virgin Islands Code are amended.