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National Council of Insurance Legislators (NCOIL)

Federal Home Loan Bank Insurer-Member Model Act

**Sponsored by Sen. Travis Holdman (IN) – NCOIL Immediate Past President*

**Draft as of June 20, 2023. To be discussed during the Financial Services & Multi-Lines Issues Committee Meeting on July 20, 2023.*

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Section 1. Short Title

This Act shall be known as the [State] Federal Home Loan Bank Insurer-Member Act.

Section 2. Definitions

A. “Federal Home Loan Bank” 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” means an Insurer that is a member of a Federal Home Loan Bank.

C. “FHLB Security Agreement” means a security agreement or any pledge, collateral or guarantee agreement, or other similar arrangement or credit enhancement relating to a security agreement to which a Federal Home Loan Bank is a party.

Section 3. Membership in a Federal Home Loan Bank

A. Insurers duly organized under the laws of any State, eligible for membership under the Federal Home Loan Bank Act, may become a member of a Federal Home Loan Bank and upon becoming a member, may:

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

(2) invest in the debt obligations of the Federal Home Loan Banks or of any Federal Home Loan Bank or their legal successor.

[Drafting Note: For purposes of this section, the term “State”, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.]

Section 4. Receivership/Rehabilitation of a Federal Home Loan Bank Insurer-member

A. Notwithstanding *[INSERT Relevant Receivership Section]*, any secured claim that a Federal Home Loan Bank has on an Insurer-member who is subject to a delinquency proceeding under *[INSERT Relevant Receivership Section]* is governed exclusively by this section.

B. Notwithstanding *[INSERT Relevant Receivership Section]*, a receiver shall not void a redemption or repurchase of any stock or equity securities made by a Federal Home Loan Bank within four (4) months of the commencement of the delinquency proceedings or that received prior approval of the receiver. However, a transfer is voidable if the transfer is made with the actual intent to hinder, delay, or defraud the Insurer-member, the receiver for the Insurer-member, existing creditors, or future creditors.

C. If a Federal Home Loan Bank exercises its rights regarding collateral pledged by an Insurer-member who is subject to a delinquency proceeding, then the Federal Home Loan Bank shall repurchase any capital stock that is in excess of the amount of Federal Home Loan Bank stock that the Insurer-member is required to hold as a minimum investment, to the extent the Federal Home Loan Bank in good faith determines the repurchase to be permissible under applicable laws, regulations, regulatory obligations, and the Federal Home Loan Bank’s capital plan, and consistent with the Federal Home Loan Bank’s current capital stock practices applicable to its entire membership.

D. Following the appointment of a receiver for an Insurer-member, the Federal Home Loan Bank, within ten (10) business days after a request made by the receiver, shall provide a process and establish timelines for the:

(1) Release of collateral that exceeds the lendable collateral value, as determined pursuant to the FHLB Security Agreement, required to support secured obligations remaining after any repayment of advances;

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

(3) Payment of fees owed by the Insurer-member and the operation of deposits and other accounts of the Insurer-member with the Federal Home Loan Bank; and

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

(E) Upon request from the receiver for an Insurer-member, the Federal Home Loan Bank shall provide any available options that an Insurer-member may exercise to renew or restructure an advance to defer associated prepayment fees, subject to the following:

(1) Market conditions;

(2) The terms of the advances outstanding to the Insurer-member;

(3) The applicable policies of the Federal Home Loan Bank; and

(4) Compliance with the Federal Home Loan Bank Act (12 U.S.C. § 1421, et seq.) and related regulations.

(F) Notwithstanding [*INSERT Relevant Injunction/Stay/Automatic Stay Section*] and any other provision of this title to the contrary, a Federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under an FHLB Security Agreement.

(G) Notwithstanding [*Insert Relevant Powers/Obligations of Liquidator Section*] and any other provisions of this title to the contrary, no liquidator shall have the power to disavow, reject or repudiate an FHLB Security Agreement.

(H) Notwithstanding [*Insert Relevant Prior/Fraudulent Transfer Section*] and any other provisions of this title to the contrary, a receiver shall not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with an FHLB Security Agreement. However, a transfer may be avoided under [*Insert Relevant Prior/Fraudulent Transfer Section*] if it was made with the actual intent to hinder, delay, or defraud either existing or future creditors.

(I) Notwithstanding [*Insert Relevant Preference Transfer Section*] and any other provisions of this title to the contrary, a liquidator or rehabilitator shall not avoid any preference arising under or in connection with an FHLB Security Agreement.

Section 5. Rules

The Commissioner is authorized to promulgate rules necessary to effectuate the purposes of this Act.

Section 6. Effective Date

This Act shall take effect xxxxxx.