

Am. S.B. 169  
As Passed by the Senate

**Topic:** Delinquency proceeding requirements for insurer-members of federal home loan banks

\_\_\_\_\_ moved to amend as follows:

In line 1 of the title, after "sections" insert "3903.01, 1  
3903.05, 3903.26," 2

In line 2 of the title, after "Code" insert "regarding 3  
delinquency proceedings involving insurer-members of federal home 4  
loan banks and" 5

In line 4, after "sections" insert "3903.01, 3903.05, 6  
3903.26," 7

Between lines 6 and 7, insert: 8

"**Sec. 3903.01.** As used in sections 3903.01 to 3903.59 of the 9  
Revised Code: 10

(A) "Admitted assets" means investment in assets which will 11  
be admitted by the superintendent of insurance pursuant to the law 12  
of this state. 13

(B) "Affiliate" has the same meaning as "affiliate of" or 14  
"affiliated with," as defined in section 3901.32 of the Revised 15  
Code. 16

(C) "Assets" means all property, real and personal, of every 17  
nature and kind whatsoever or any interest therein. 18

(D) "Ancillary state" means any state other than a domiciliary state.	19 20
(E) "Commodity contract" means any of the following:	21
(1) A contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the "Commodity Exchange Act," 7 U.S.C. 1 et seq., as amended, or a board of trade outside the United States;	22 23 24 25 26
(2) An agreement that is subject to regulation under section 19 of the "Commodity Exchange Act," 7 U.S.C. 23, as amended, and that is commonly known to the commodities trade as a margin account, margin contract, leverage account, or leverage contract;	27 28 29 30
(3) An agreement or transaction that is subject to regulation under section 4c(b) of the "Commodity Exchange Act," 7 U.S.C. 6c(b), as amended, and that is commonly known to the commodities trade as a commodity option;	31 32 33 34
(4) Any combination of agreements or transactions described in division (E) of this section;	35 36
(5) Any option to enter into an agreement or transaction described in division (E) of this section.	37 38
(F) "Creditor" means a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed, or contingent.	39 40 41
(G) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving the insurer, and any summary proceeding under section 3903.09 or 3903.10 of the Revised Code. "Formal delinquency proceeding" means any liquidation or rehabilitation proceeding.	42 43 44 45 46 47

(H) "Doing business" includes any of the following acts,	48
whether effected by mail or otherwise:	49
(1) The issuance or delivery of contracts of insurance to	50
persons resident in this state;	51
(2) The solicitation of applications for such contracts, or	52
other negotiations preliminary to the execution of such contracts;	53
(3) The collection of premiums, membership fees, assessments,	54
or other consideration for such contracts;	55
(4) The transaction of matters subsequent to execution of	56
such contracts and arising out of them;	57
(5) Operating under a license or certificate of authority, as	58
an insurer, issued by the department of insurance.	59
(I) "Domiciliary state" means the state in which an insurer	60
is incorporated or organized, or, in the case of an alien insurer,	61
its state of entry.	62
(J) "Fair consideration" is given for property or obligation	63
when either of the following apply:	64
(1) When in exchange for such property or obligation, as a	65
fair equivalent therefor, and in good faith, property is conveyed,	66
services are rendered, an obligation is incurred, or an antecedent	67
debt is satisfied;	68
(2) When such property or obligation is received in good	69
faith to secure a present advance or antecedent debt in an amount	70
not disproportionately small as compared to the value of the	71
property or obligation obtained.	72
(K) <u>"Federal home loan bank" means an institution chartered</u>	73
<u>under the "Federal Home Loan Bank Act of 1932," 12 U.S.C. 1421, et</u>	74
<u>seq.</u>	75

(L) "Foreign country" means any other jurisdiction not in any state. 76  
77

~~(L)~~(M) "Forward contract" has the same meaning as in the federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 1821(e)(8)(D), as now and hereafter amended. 78  
79  
80

~~(M)~~(N) "Guaranty association" means the Ohio insurance guaranty association created by section 3955.06 of the Revised Code and any other similar entity hereafter created by the general assembly for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in or hereafter created by the legislature of any other state. 81  
82  
83  
84  
85  
86

~~(N)~~(O) "Insolvency" or "insolvent" means: 87

(1) For an insurer issuing only assessable fire insurance policies either of the following: 88  
89

(a) The inability to pay any obligation within thirty days after it becomes payable; 90  
91

(b) If an assessment is made within thirty days after such date, the inability to pay the obligation thirty days following the date specified in the first assessment notice issued after the date of loss. 92  
93  
94  
95

(2) For any other insurer, that it is unable to pay its obligations when they are due, or when its admitted assets do not exceed its liabilities plus the greater of either of the following: 96  
97  
98  
99

(a) Any capital and surplus required by law for its organization; 100  
101

(b) The total par or stated value of its authorized and issued capital stock. 102  
103

(3) As to any insurer licensed to do business in this state 104  
 as of the effective date of sections 3903.01 to 3903.59 of the 105  
 Revised Code that does not meet the standard established under 106  
 division (N)(2) of this section, the term "insolvency" or 107  
 "insolvent" means, for a period not to exceed three years from the 108  
 effective date of sections 3903.01 to 3903.59 of the Revised Code, 109  
 that it is unable to pay its obligations when they are due or that 110  
 its admitted assets do not exceed its liabilities plus any 111  
 required capital contribution ordered by the superintendent under 112  
 provisions of Title XXXIX of the Revised Code. 113

(4) For purposes of divisions (N)(2) to (4) of this section, 114  
 "liabilities" includes, but is not limited to, reserves required 115  
 by statute or by rules of the superintendent or specific 116  
 requirements imposed by the superintendent upon a subject company 117  
 at the time of admission or subsequent thereto. 118

~~(O)~~(P) "Insurer" means any person who has done, purports to 119  
 do, is doing, or is licensed to do an insurance business, and is 120  
 or has been subject to the authority of, or to liquidation, 121  
 rehabilitation, reorganization, supervision, or conservation by, 122  
 any insurance commissioner, superintendent, or equivalent 123  
 official. For purposes of sections 3903.01 to 3903.59 of the 124  
 Revised Code, any other persons included under section 3903.03 of 125  
 the Revised Code are deemed to be insurers. 126

~~(P)~~(O) "Netting agreement" means: 127

(1) A contract or agreement, including a master agreement, 128  
 and any terms and conditions incorporated by reference in such a 129  
 contract or agreement, that provides for the netting, liquidation, 130  
 setoff, termination, acceleration, or close out under or in 131  
 connection with a qualified financial contract, or any present or 132  
 future payment or delivery obligations or entitlements under a 133

qualified financial contract, including liquidation or close-out	134
values relating to those obligations or entitlements;	135
(2) A master agreement, together with all schedules,	136
confirmations, definitions, and addenda to the agreement and	137
transactions under the agreement, which shall be treated as one	138
netting agreement, and any bridge agreement for one or more master	139
agreements;	140
(3) Any security agreement or arrangement, credit support	141
document, or guarantee or reimbursement obligation related to any	142
contract or agreement described in division (P) of this section.	143
Any contract or agreement described in division (P) of this	144
section relating to agreements or transactions that are not	145
qualified financial contracts shall be deemed to be a netting	146
agreement only with respect to those agreements or transactions	147
that are qualified financial contracts.	148
<del>(Q)</del> (R) "Preferred claim" means any claim with respect to	149
which the terms of sections 3903.01 to 3903.59 of the Revised Code	150
accord priority of payment from the assets of the insurer.	151
<del>(R)</del> (S) "Qualified financial contract" means any commodity	152
contract, forward contract, repurchase agreement, securities	153
contract, swap agreement, and any similar agreement that the	154
superintendent may determine by rule or order to be a qualified	155
financial contract for purposes of this chapter.	156
<del>(S)</del> (T) "Reciprocal state" means any state other than this	157
state in which in substance and effect division (A) of section	158
3903.18, and sections 3903.52, 3903.53, and 3903.55 to 3903.57 of	159
the Revised Code are in force, in which provisions are in force	160
requiring that the superintendent or equivalent official be the	161
receiver, liquidator, rehabilitator, or conservator of a	162

delinquent insurer, and in which some provision exists for the 163  
avoidance of fraudulent conveyances and preferential transfers. 164

~~(T)~~(U) "Repurchase agreement" has the same meaning as in the 165  
federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 166  
1821(e)(8)(D), as now and hereafter amended. 167

~~(U)~~(V) "Secured claim" means any claim secured by mortgage, 168  
trust deed, security agreement, pledge, deposit as security, 169  
escrow, or otherwise, but not including special deposit claims or 170  
claims against assets. The term also includes claims which have 171  
become liens upon specific assets by reason of judicial process. 172

~~(V)~~(W) "Securities contract" has the same meaning as in the 173  
federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 174  
1821(e)(8)(D), as now and hereafter amended. 175

~~(W)~~(X) "Special deposit claim" means any claim secured by a 176  
deposit made pursuant to statute for the security or benefit of a 177  
limited class or classes of persons, but not including any claim 178  
secured by assets. 179

~~(X)~~(Y) "State" has the meaning set forth in division (G) of 180  
section 1.59 of the Revised Code. 181

~~(Y)~~(Z) "Superintendent" or "superintendent of insurance" 182  
means the superintendent of insurance of this state, or, when the 183  
context requires, the superintendent or commissioner of insurance, 184  
or equivalent official, of another state. 185

~~(Z)~~(AA) "Swap agreement" has the same meaning as in the 186  
federal "Deposit Insurance Act," 64 Stat. 884, 12 U.S.C. 187  
1821(e)(8)(D), as now and hereafter amended. 188

~~(AA)~~(BB) "Transfer" includes the sale and every other and 189  
different mode, direct or indirect, of disposing of or of parting 190  
with property or with an interest in property, or with the 191

possession of property or of fixing a lien upon property or upon 192  
 an interest in property, absolutely or conditionally, voluntarily, 193  
 or by or without judicial proceedings. The retention of a security 194  
 title to property delivered to a debtor shall be deemed a transfer 195  
 suffered by the debtor. 196

**Sec. 3903.05.** (A) Upon complaint or motion of any receiver, 197  
 conservator, rehabilitator, or liquidator appointed in a 198  
 proceeding under sections 3903.01 to 3903.59 of the Revised Code, 199  
 any court of general jurisdiction may issue a temporary 200  
 restraining order, a preliminary injunction, a permanent 201  
 injunction, or such other orders that the court considers 202  
 necessary and proper to prevent any one or more of the following: 203

(1) The transaction of further business; 204

(2) The transfer of property; 205

(3) Interference with the receiver, conservator, 206  
 rehabilitator, or liquidator or with a proceeding under sections 207  
 3903.01 to 3903.59 of the Revised Code; 208

(4) Waste of the insurer's assets; 209

(5) Dissipation and transfer of bank accounts; 210

(6) The commencement or further prosecution of any actions or 211  
 proceedings; 212

(7) The obtaining of preferences, judgments, attachments, 213  
 garnishments, or liens against the insurer, its assets, or its 214  
 policyholders; 215

(8) The levying of execution against the insurer, its assets, 216  
 or its policyholders; 217

(9) The making of any sale or deed for nonpayment of taxes or 218  
 assessments that would lessen the value of the assets of the 219



insurer;	220
(10) The withholding from the receiver, conservator,	221
rehabilitator, or liquidator of books, accounts, documents, or	222
other records relating to the business of the insurer;	223
(11) Any other threatened or contemplated action that might	224
lessen the value of the insurer's assets or prejudice the rights	225
of policyholders, creditors, or shareholders, or the	226
administration of any proceeding under sections 3903.01 to 3903.59	227
of the Revised Code.	228
(B) The receiver, conservator, rehabilitator, or liquidator	229
may apply to any court outside of this state for any relief	230
described in division (A) of this section.	231
<u>(C)(1) A federal home loan bank shall not be stayed or</u>	232
<u>otherwise prohibited by a court from exercising its rights</u>	233
<u>regarding collateral pledged by an insurer-member for more than</u>	234
<u>ten days following the date a temporary restraining order,</u>	235
<u>preliminary injunction, or permanent injunction is issued by the</u>	236
<u>court pursuant to division (A) of this section.</u>	237
<u>(2) A federal home loan bank exercising its rights regarding</u>	238
<u>collateral pledged by an insurer-member shall, within seven days</u>	239
<u>of receiving a redemption request made by the insurer-member,</u>	240
<u>repurchase any of the insurer-member's outstanding capital stock</u>	241
<u>in excess of the amount the insurer-member must hold as a minimum</u>	242
<u>investment. The federal home loan bank shall repurchase the excess</u>	243
<u>outstanding capital stock only to the extent that it determines in</u>	244
<u>good faith that the repurchase is both of the following:</u>	245
<u>(a) Permissible under federal laws and regulations and the</u>	246
<u>federal home loan bank's capital plan;</u>	247
<u>(b) Consistent with the capital stock practices currently</u>	248

<u>applicable to the federal home loan bank's entire membership.</u>	249
<u>(D)(1) Not later than ten days after the date of appointment</u>	250
<u>of a receiver, conservator, rehabilitator, or liquidator in a</u>	251
<u>proceeding under sections 3903.01 to 3903.59 of the Revised Code</u>	252
<u>involving an insurer-member of a federal home loan bank, the</u>	253
<u>federal home loan bank shall provide to the receiver, conservator,</u>	254
<u>rehabilitator, or liquidator a process and timeline for all of the</u>	255
<u>following:</u>	256
<u>(a) The release of any collateral held by the federal home</u>	257
<u>loan bank that exceeds the amount that is required to support the</u>	258
<u>secured obligations of the insurer-member and that is remaining</u>	259
<u>after any repayment of loans, as determined under the applicable</u>	260
<u>agreements between the federal home loan bank and the</u>	261
<u>insurer-member;</u>	262
<u>(b) The release of any collateral of the insurer-member</u>	263
<u>remaining in the federal home loan bank's possession following</u>	264
<u>repayment in full of all outstanding secured obligations of the</u>	265
<u>insurer-member;</u>	266
<u>(c) The payment of fees owed by the insurer-member and the</u>	267
<u>operation, maintenance, closure, or disposition of deposits and</u>	268
<u>other accounts of the insurer-member, as mutually agreed upon by</u>	269
<u>the receiver, conservator, rehabilitator, or liquidator and the</u>	270
<u>federal home loan bank;</u>	271
<u>(d) Any redemption or repurchase of federal home loan bank</u>	272
<u>stock or excess stock of any class that the insurer-member is</u>	273
<u>required to own under agreements between the federal home loan</u>	274
<u>bank and the insurer-member.</u>	275
<u>(2) Upon the request of a receiver, conservator,</u>	276
<u>rehabilitator, or liquidator appointed in a proceeding under</u>	277

sections 3903.01 to 3903.59 of the Revised Code involving a 278  
federal home loan bank insurer-member, the federal home loan bank 279  
shall provide to the receiver, conservator, rehabilitator, or 280  
liquidator any available options for the insurer-member to renew 281  
or restructure a loan. In determining which options are available, 282  
the federal home loan bank may consider market conditions, the 283  
terms of any loans outstanding to the insurer-member, the 284  
applicable policies of the federal home loan bank, and the federal 285  
laws and regulations applicable to federal home loan banks. 286

(E) As used in this section, "insurer-member" means a member 287  
of the federal home loan bank in question that is an insurer. 288

**Sec. 3903.26.** (A) ~~Every~~ Except as provided in division (D) of 289  
this section, every transfer made or suffered and every obligation 290  
 incurred by an insurer within one year prior to the filing of a 291  
 successful complaint for rehabilitation or liquidation under 292  
 sections 3903.01 to 3903.59 of the Revised Code is fraudulent as 293  
 to then existing and future creditors if made or incurred without 294  
 fair consideration, or with actual intent to hinder, delay, or 295  
 defraud either existing or future creditors. A transfer made or an 296  
 obligation incurred by an insurer ordered to be rehabilitated or 297  
 liquidated under sections 3903.01 to 3903.59 of the Revised Code, 298  
 which is fraudulent under this section, may be avoided by the 299  
 rehabilitator or liquidator, except as to a person who in good 300  
 faith is a purchaser, lienor, or obligee for a present fair 301  
 equivalent value, and except that any purchaser, lienor, or 302  
 obligee, who in good faith has given a consideration less than 303  
 fair for such transfer, lien, or obligation, may retain the 304  
 property, lien, or obligation as security for repayment. The court 305  
 may, on due notice, order any such transfer or obligation to be 306  
 preserved for the benefit of the estate, and in that event, the 307

rehabilitator or liquidator shall succeed to and may enforce the 308  
rights of the purchaser, lienor, or obligee. 309

(B)(1) A transfer of property other than real property is 310  
deemed to be made or suffered when it becomes so far perfected 311  
that no subsequent lien obtainable by legal or equitable 312  
proceedings on a simple contract could become superior to the 313  
rights of the transferee under division (C) of section 3903.28 of 314  
the Revised Code. 315

(2) A transfer of real property is deemed to be made or 316  
suffered when it becomes so far perfected that no subsequent bona 317  
fide purchaser from the insurer could obtain rights superior to 318  
the rights of the transferee. 319

(3) A transfer which creates an equitable lien is not deemed 320  
to be perfected if there are available means by which a legal lien 321  
can be created. 322

(4) Any transfer not perfected prior to the filing of a 323  
complaint for rehabilitation or liquidation is deemed to be made 324  
immediately before the filing of the complaint. 325

(5) The provisions of divisions (B)(1) to (5) of this section 326  
apply whether or not there are or were creditors who might have 327  
obtained any liens or persons who might have become bona fide 328  
purchasers. 329

(C) Any transaction of the insurer with a reinsurer shall be 330  
deemed fraudulent and may be avoided by the rehabilitator or 331  
liquidator under division (A) of this section if both of the 332  
following apply: 333

(1) The transaction consists of the termination, adjustment, 334  
or settlement of a reinsurance contract in which the reinsurer is 335  
released from any part of its duty to pay the originally specified 336

share of losses that had occurred prior to the time of the 337  
 transaction, unless the reinsurer gives a present fair equivalent 338  
 value for the release; 339

(2) Any part of the transaction took place within one year 340  
 prior to the date of filing of the complaint through which the 341  
 rehabilitation or liquidation was commenced. 342

(D)(1) Except as provided in division (D)(2) of this section, 343  
any transfer of and any obligation to transfer money or other 344  
property from an insurer-member of a federal home loan bank to the 345  
federal home loan bank under a federal home loan bank security, 346  
pledge, collateral, or guarantee agreement, or other similar 347  
arrangement or credit enhancement, shall not be deemed fraudulent 348  
and shall not be avoided by the rehabilitator or liquidator under 349  
division (A) of this section if the agreement, arrangement, or 350  
enhancement is both of the following: 351

(a) Made in the ordinary course of business; 352

(b) Made in compliance with the applicable federal home loan 353  
bank agreement. 354

(2) Notwithstanding division (D)(1) of this section, a 355  
transfer may be deemed fraudulent and may be avoided by the 356  
rehabilitator or liquidator under division (A) of this section if 357  
the transfer is made with the intent to hinder, delay, or defraud 358  
an insurer-member of the federal home loan bank, the liquidator or 359  
rehabilitator of the insurer-member, or existing or future 360  
creditors of the insurer-member. 361

(3) As used in division (D) of this section, "insurer-member" 362  
means a member of the federal home loan bank in question that is 363  
an insurer." 364

In line 512, after "sections" insert "3903.01, 3903.05," 365

3903.26, "

366

The motion was \_\_\_\_\_ agreed to.