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BILL ANALYSIS

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Senate Bill 937 (as introduced 2-8-12)
Sponsor: Senator Joe Hune
Committee: Insurance

Date Completed: 3-6-12

CONTENT

The bill would amend Chapter 81 (Supervision, Rehabilitation, and Liquidation) of the Insurance Code to revise provisions under which a person cannot be prevented from terminating a netting agreement or qualified financial contract with an insurer that is subject to a delinquency proceeding, or exercising certain contractual rights under related security agreements, and a receiver may not avoid a transfer in connection with such an agreement or contract that was made before a delinquency proceeding began. Under the bill, these provisions would apply to rights under a pledge or other security agreement that was not related to a netting agreement or qualified financial contract.

Currently, a person may not be stayed or prohibited from exercising a contractual right to terminate, liquidate, or close out any netting agreement or qualified financial contract with an insurer because of the commencement of a formal delinquency proceeding under Chapter 81 or the insolvency, financial condition, or default of the insurer at any time, if the right is enforceable under applicable law other than the Code.

A person also may not be stayed or prohibited from exercising a right under a pledge, security, collateral, or guarantee agreement or similar security arrangement or credit support document relating to a netting agreement or qualified financial contract. Under the bill, instead, a person could not be stayed or prohibited from exercising a right under either of the following:

-- A pledge, security, collateral, reimbursement, or guarantee agreement or any similar security agreement.
-- An arrangement or credit enhancement relating to at least one netting agreement or qualified financial contract.

(A "netting agreement" is a contract or agreement that documents one or more transactions between the parties for or involving one or more qualified financial contracts and that provides for the netting or liquidation of qualified financial contracts or present or future payment obligations or payment entitlements among the parties to the netting agreement.

A "qualified financial contract" is a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, or any similar agreement that the Commissioner of Financial and Insurance Regulation determines to be a qualified financial contract for the purpose of Chapter 81.)

Currently, a receiver may not avoid a transfer of money or other property in connection with a netting agreement or qualified financial contract or a pledge, security, collateral, or guarantee agreement or any similar document relating to a netting agreement or qualified financial contract that is made before the commencement of a formal delinquency proceeding under Chapter 81.

Under the bill, instead, a receiver could not avoid a transfer of money or other property in connection with any of the following that was made before the commencement of a formal delinquency proceeding under Chapter 81:

-- A netting agreement or qualified financial contract.
-- A pledge, security, collateral, reimbursement, or guarantee agreement or similar security agreement.
-- An arrangement or credit enhancement relating to a netting agreement or qualified financial contract.

MCL 500.8115a Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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