

4093

2011-2012 Regular Sessions

I N S E N A T E

March 17, 2011

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to qualified trusts and qualified reserve credits; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (d) of section 6901 of the insurance law, as
2 added by chapter 48 of the laws of 1989, is amended to read as follows:
3 (d) "Aggregate net liability" means the aggregate amount of insured
4 unpaid principal, interest and other monetary payments, if any, of guar-
5 antied obligations insured or assumed, less reinsurance ceded [and
6 less], collateral AND QUALIFIED RESERVE CREDITS.
7 S 2. Section 6901 of the insurance law is amended by adding two new
8 subsections (t) and (u) to read as follows:
9 (T) "QUALIFIED TRUST" MEANS A TRUST THAT IS ENGAGED OR ORGANIZED TO
10 ENGAGE EXCLUSIVELY IN THE ACQUISITION AND MANAGEMENT OF INVESTMENTS
11 AVAILABLE FIRST FOR THE PAYMENT OF LOSSES AND CLAIMS OF A SINGLE FINAN-
12 CIAL GUARANTY INSURANCE CORPORATION.
13 (U) "QUALIFIED RESERVE CREDIT" MEANS, WITH RESPECT TO INVESTMENTS IN
14 WHICH THE INTERESTS OF THE QUALIFIED TRUST ARE LIMITED TO RIGHTS TO
15 PRINCIPAL, INTEREST OR OTHER PAYMENTS FROM SUCH INVESTMENTS, THE PRESENT
16 VALUE OF AMOUNTS RECEIVABLE BY THE QUALIFIED TRUST FROM INVESTMENTS
17 GIVEN A DESIGNATION OF ONE BY THE SECURITIES VALUATION OFFICE OF THE
18 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.
19 S 3. Section 6902 of the insurance law is amended by adding three new
20 subsections (c), (d) and (e) to read as follows:
21 (C) IN DETERMINING THE FINANCIAL CONDITION OF A DOMESTIC OR FOREIGN
22 FINANCIAL GUARANTY INSURANCE CORPORATION FOR THE PURPOSES OF THIS CHAP-
23 TER, IN ADDITION TO THE ASSETS SET FORTH IN SECTION ONE THOUSAND THREE
24 HUNDRED ONE OF THIS CHAPTER, THERE SHALL BE ALLOWED AS AN ADMITTED ASSET

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 OF SUCH FINANCIAL GUARANTY INSURANCE CORPORATION THE NET EQUITY OF A
2 QUALIFIED TRUST. THE ASSETS OF SUCH QUALIFIED TRUST CONSIDERED IN DETER-
3 MINING ITS NET EQUITY SHALL BE LIMITED TO CASH, INCLUDING LEGAL TENDER
4 OR THE EQUIVALENT IN ANY OFFICE OF SUCH COMPANY OR IN TRANSIT UNDER ITS
5 CONTROL AND THE TRUE BALANCE OF ANY DEPOSIT IN A SOLVENT BANK, TRUST
6 COMPANY OR THRIFT INSTITUTION, AND OBLIGATIONS WHICH ARE NOT IN DEFAULT
7 AS TO PRINCIPAL OR INTEREST, WHICH ARE VALID AND LEGALLY AUTHORIZED, AND
8 WHICH ARE ISSUED, ASSUMED, GUARANTEED OR INSURED BY THE UNITED STATES OR
9 BY ANY AGENCY OR INSTRUMENTALITY THEREOF. THE RIGHTS AND OBLIGATIONS OF
10 THE FINANCIAL GUARANTY INSURANCE CORPORATION WITH RESPECT TO A QUALIFY-
11 ING TRUST SHALL BE DETERMINED BY THE TERMS AND CONDITIONS OF THE QUALI-
12 FYING TRUST, PROVIDED HOWEVER THAT THE RIGHTS OF ALL OTHER PARTIES SHALL
13 BE SUBORDINATE TO THE RIGHTS OF SUCH FINANCIAL GUARANTY INSURANCE CORPO-
14 RATION. THE FINANCIAL GUARANTY INSURANCE CORPORATION SHALL ESTABLISH THE
15 TERMS AND CONDITIONS OF THE QUALIFYING TRUST, WHICH SHALL INCLUDE, WITH-
16 OUT LIMITATION, THE REQUIREMENT THAT THE TRUSTEE'S AUTHORITY TO INVEST
17 AND ACCEPT SUBSTITUTIONS THEREOF SHALL BE SUBJECT TO THE PRIOR APPROVAL
18 OF SUCH FINANCIAL GUARANTY INSURANCE CORPORATION UNLESS THE TRUST
19 INSTRUMENT OR AGREEMENT OF THE QUALIFYING TRUST SETS FORTH THE INVEST-
20 MENTS ACCEPTABLE TO SUCH FINANCIAL GUARANTY INSURANCE CORPORATION. THE
21 TERMS AND CONDITIONS OF A QUALIFYING TRUST FORMED BY A DOMESTIC FINAN-
22 CIAL GUARANTY INSURANCE CORPORATION AND ANY AMENDMENT THERETO SHALL BE
23 SUBJECT TO THE SUPERINTENDENT'S APPROVAL. NO PAYMENT IN COMPLIANCE WITH
24 THE TERMS AND CONDITIONS OF A QUALIFYING TRUST SHALL BE SUBJECT TO, OR
25 INCLUDED IN CONNECTION WITH THE APPLICATION OF, SECTION FOUR THOUSAND
26 ONE HUNDRED FIVE OF THIS CHAPTER. SECTION ONE THOUSAND FOUR HUNDRED NINE
27 OF THIS CHAPTER SHALL NOT APPLY TO QUALIFYING TRUSTS OR A FINANCIAL
28 GUARANTY INSURANCE CORPORATION'S INTEREST IN A QUALIFIED TRUST.

29 (D) IF THE REQUIREMENTS OF SECTION ONE THOUSAND FOUR HUNDRED TWO OF
30 THIS CHAPTER AND PARAGRAPH ONE OF SUBSECTION (B) OF THIS SECTION ARE
31 MET, A FINANCIAL GUARANTY INSURANCE CORPORATION, MAY, EXCEPT AS SET
32 FORTH BELOW, INVEST ITS FUNDS IN, OR OTHERWISE ACQUIRE, OR LOAN UPON,
33 ONLY THE TYPES OF INVESTMENTS SPECIFIED IN SECTION ONE THOUSAND FOUR
34 HUNDRED TWO OF THIS CHAPTER, SECTION ONE THOUSAND FOUR HUNDRED THREE OF
35 THIS CHAPTER AND SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED
36 FOUR OF THIS CHAPTER (EXCEPT PARAGRAPHS EIGHT AND TEN OF SUBSECTION (A)
37 OF SUCH SECTION); PROVIDED THAT ANY SUCH CORPORATION MAY ALSO INVEST ITS
38 FUNDS IN, OR OTHERWISE ACQUIRE OR LOAN UPON INVESTMENTS PERMITTED UNDER
39 SECTIONS ONE THOUSAND FOUR HUNDRED SEVEN OF THIS CHAPTER (INCLUDING
40 INVESTMENTS OF THE CLASSES DESCRIBED IN PARAGRAPHS EIGHT AND TEN OF
41 SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAP-
42 TER), SECTION ONE THOUSAND FOUR HUNDRED EIGHT OF THIS CHAPTER AND ARTI-
43 CLE SIXTEEN OF THIS CHAPTER, SO LONG AS IT MAINTAINS CASH, INVESTMENTS
44 REQUIRED BY SECTION ONE THOUSAND FOUR HUNDRED TWO OF THIS CHAPTER OR
45 PARAGRAPH THREE OF SUBSECTION (B) OF THIS SECTION, RESERVE INVESTMENTS
46 UNDER SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS
47 CHAPTER AND INTERESTS IN A QUALIFIED TRUST, FREE FROM ANY LIEN OR
48 PLEDGE, WHICH, WHEN VALUED IN ACCORDANCE WITH THE PROVISIONS OF THIS
49 CHAPTER, SHALL AT LEAST EQUAL FIFTY PERCENT OF THE AGGREGATE AMOUNT OF
50 ITS UNEARNED PREMIUM, LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES AS SHOWN
51 BY ITS LAST SWORN STATEMENT, ANNUAL OR QUARTERLY, ON FILE WITH THE
52 SUPERINTENDENT. IF A FINANCIAL GUARANTY INSURANCE CORPORATION MAINTAINS
53 CASH, INVESTMENTS REQUIRED BY SECTION ONE THOUSAND FOUR HUNDRED TWO OF
54 THIS ARTICLE OR PARAGRAPH THREE OF SUBSECTION (B) OF THIS SECTION,
55 RESERVE INVESTMENTS UNDER SUBSECTION (A) OF SECTION ONE THOUSAND FOUR
56 HUNDRED FOUR OF THIS CHAPTER AND INTERESTS IN A QUALIFIED TRUST, FREE

1 FROM ANY LIEN OR PLEDGE, WHICH, WHEN VALUED IN ACCORDANCE WITH THE
2 PROVISIONS OF THIS CHAPTER, SHALL AT LEAST EQUAL THE AGGREGATE OF SEVEN-
3 TY PERCENT OF ITS LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES AND FIFTY
4 PERCENT OF ITS UNEARNED PREMIUM RESERVES AS SHOWN BY ITS LAST SWORN
5 STATEMENT, ANNUAL OR QUARTERLY, ON FILE WITH THE SUPERINTENDENT, THEN
6 SUCH CORPORATION MAY IN ADDITION ENTER INTO THE TYPES OF TRANSACTIONS
7 SET FORTH IN SECTION ONE THOUSAND FOUR HUNDRED TEN OF THIS CHAPTER,
8 SUBJECT TO THE LIMITATIONS SET FORTH IN SUCH SECTION. THE TERM "LIEN OR
9 PLEDGE" AS USED IN THIS SUBSECTION SHALL NOT INCLUDE ANY DEPOSIT OF
10 SECURITIES OR CASH WITH ANY GOVERNMENT, NOR TRUSTED ASSETS, HELD IN
11 TRUST FOR THE BENEFIT OR PROTECTION OF ALL OR ANY CLASS OF THE POLICY-
12 HOLDERS, OR POLICYHOLDERS AND CREDITORS, OF SUCH CORPORATION.

13 (E) FOR PURPOSES OF DETERMINING QUALIFIED RESERVE CREDITS, THE
14 DISCOUNT RATE USED TO DETERMINE PRESENT VALUE SHALL BE THE AVERAGE RATE
15 OF RETURN ON THE ADMITTED ASSETS OF THE FINANCIAL GUARANTY INSURANCE
16 CORPORATION AS OF THE DATE OF THE COMPUTATION OF THE APPLICABLE RESERVE
17 UNDER THIS CHAPTER. THE DISCOUNT RATE SHALL BE ADJUSTED AT THE END OF
18 EACH CALENDAR YEAR.

19 S 4. Paragraph 5 of subsection (a) of section 6903 of the insurance
20 law, as amended by chapter 605 of the laws of 2004, is amended to read
21 as follows:

22 (5) Contingency reserves required in paragraphs two, three and four of
23 this subsection may be established and maintained net of collateral
24 [and], reinsurance AND QUALIFIED RESERVE CREDITS, provided that, in the
25 case of reinsurance, the reinsurance agreement requires that the
26 reinsurer shall, on or after the effective date of the reinsurance,
27 establish and maintain a reserve in an amount equal to the amount by
28 which the insurer reduces its contingency reserve, and contingency
29 reserves required in paragraphs three and four of this subsection may be
30 maintained (A) net of refundings and refinancings to the extent the
31 refunded or refinanced issue is paid off or secured by obligations which
32 are directly payable or guaranteed by the United States government and
33 (B) net of insured securities in a unit investment trust or mutual fund
34 that have been sold from the trust or fund without insurance.

35 S 5. This act shall take effect immediately and shall expire and be
36 deemed repealed 5 years after such date.