S T A T E O F N E W Y O R K

3905

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. MORELLE, PRETLOW -- read once and referred 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:

Section 1. Subsection (d) of section 6901 of the insurance law, as added by chapter 48 of the laws of 1989, is amended to read as follows:

(d) "Aggregate net liability" means the aggregate amount of insured unpaid principal, interest and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance ceded [and less], collateral AND QUALIFIED RESERVE CREDITS.

S 2. Section 6901 of the insurance law is amended by adding two new subsections (t) and (u) to read as follows:

(T) "QUALIFIED TRUST" MEANS A TRUST THAT IS ENGAGED OR ORGANIZED TO ENGAGE EXCLUSIVELY IN THE ACQUISITION AND MANAGEMENT OF INVESTMENTS AVAILABLE FIRST FOR THE PAYMENT OF LOSSES AND CLAIMS OF A SINGLE FINANCIAL GUARANTY INSURANCE CORPORATION.

(U) "QUALIFIED RESERVE CREDIT" MEANS, WITH RESPECT TO INVESTMENTS IN WHICH THE INTERESTS OF THE QUALIFIED TRUST ARE LIMITED TO RIGHTS TO PRINCIPAL, INTEREST OR OTHER PAYMENTS FROM SUCH INVESTMENTS, THE PRESENT VALUE OF AMOUNTS RECEIVABLE BY THE QUALIFIED TRUST FROM INVESTMENTS GIVEN A DESIGNATION OF ONE BY THE SECURITIES VALUATION OFFICE OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

S 3. Section 6902 of the insurance law is amended by adding three new subsections (c), (d) and (e) to read as follows:

(C) IN DETERMINING THE FINANCIAL CONDITION OF A DOMESTIC OR FOREIGN FINANCIAL GUARANTY INSURANCE CORPORATION FOR THE PURPOSES OF THIS CHAPTER, IN ADDITION TO THE ASSETS SET FORTH IN SECTION ONE THOUSAND THREE 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.

LBD05170-01-1

OF SUCH FINANCIAL GUARANTY INSURANCE CORPORATION THE NET EQUITY OF A QUALIFIED TRUST. THE ASSETS OF SUCH QUALIFIED TRUST CONSIDERED IN DETERMINING ITS NET EQUITY SHALL BE LIMITED TO CASH, INCLUDING LEGAL TENDER OR THE EQUIVALENT IN ANY OFFICE OF SUCH COMPANY OR IN TRANSIT UNDER ITS CONTROL AND THE TRUE BALANCE OF ANY DEPOSIT IN A SOLVENT BANK, TRUST COMPANY OR THRIFT INSTITUTION, AND OBLIGATIONS WHICH ARE NOT IN DEFAULT AS TO PRINCIPAL OR INTEREST, WHICH ARE VALID AND LEGALLY AUTHORIZED, AND WHICH ARE ISSUED, ASSUMED, GUARANTEED OR INSURED BY THE UNITED STATES OR BY ANY AGENCY OR INSTRUMENTALITY THEREOF. THE RIGHTS AND OBLIGATIONS OF THE FINANCIAL GUARANTY INSURANCE CORPORATION WITH RESPECT TO A QUALIFYING TRUST SHALL BE DETERMINED BY THE TERMS AND CONDITIONS OF THE QUALIFYING TRUST, PROVIDED HOWEVER THAT THE RIGHTS OF ALL OTHER PARTIES SHALL BE SUBORDINATE TO THE RIGHTS OF SUCH FINANCIAL GUARANTY INSURANCE CORPORATION. THE FINANCIAL GUARANTY INSURANCE CORPORATION SHALL ESTABLISH THE TERMS AND CONDITIONS OF THE QUALIFYING TRUST, WHICH SHALL INCLUDE, WITHOUT LIMITATION, THE REQUIREMENT THAT THE TRUSTEE'S AUTHORITY TO INVEST AND ACCEPT SUBSTITUTIONS THEREOF SHALL BE SUBJECT TO THE PRIOR APPROVAL OF SUCH FINANCIAL GUARANTY INSURANCE CORPORATION UNLESS THE TRUST INSTRUMENT OR AGREEMENT OF THE QUALIFYING TRUST SETS FORTH THE INVESTMENTS ACCEPTABLE TO SUCH FINANCIAL GUARANTY INSURANCE CORPORATION. THE TERMS AND CONDITIONS OF A QUALIFYING TRUST FORMED BY A DOMESTIC FINANCIAL GUARANTY INSURANCE CORPORATION AND ANY AMENDMENT THERETO SHALL BE SUBJECT TO THE SUPERINTENDENT'S APPROVAL. NO PAYMENT IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF A QUALIFYING TRUST SHALL BE SUBJECT TO, OR INCLUDED IN CONNECTION WITH THE APPLICATION OF, SECTION FOUR THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER. SECTION ONE THOUSAND FOUR HUNDRED NINE OF THIS CHAPTER SHALL NOT APPLY TO QUALIFYING TRUSTS OR A FINANCIAL GUARANTY INSURANCE CORPORATION'S INTEREST IN A QUALIFIED TRUST.

(D) IF THE REQUIREMENTS OF SECTION ONE THOUSAND FOUR HUNDRED TWO OF THIS CHAPTER AND PARAGRAPH ONE OF SUBSECTION (B) OF THIS SECTION ARE MET, A FINANCIAL GUARANTY INSURANCE CORPORATION, MAY, EXCEPT AS SET FORTH BELOW, INVEST ITS FUNDS IN, OR OTHERWISE ACQUIRE, OR LOAN UPON, ONLY THE TYPES OF INVESTMENTS SPECIFIED IN SECTION ONE THOUSAND FOUR HUNDRED TWO OF THIS CHAPTER, SECTION ONE THOUSAND FOUR HUNDRED THREE OF THIS CHAPTER AND SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAPTER (EXCEPT PARAGRAPHS EIGHT AND TEN OF SUBSECTION (A) OF SUCH SECTION); PROVIDED THAT ANY SUCH CORPORATION MAY ALSO INVEST ITS FUNDS IN, OR OTHERWISE ACQUIRE OR LOAN UPON INVESTMENTS PERMITTED UNDER SECTIONS ONE THOUSAND FOUR HUNDRED SEVEN OF THIS CHAPTER (INCLUDING INVESTMENTS OF THE CLASSES DESCRIBED IN PARAGRAPHS EIGHT AND TEN OF SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAPTER), SECTION ONE THOUSAND FOUR HUNDRED EIGHT OF THIS CHAPTER AND ARTICLE SIXTEEN OF THIS CHAPTER, SO LONG AS IT MAINTAINS CASH, INVESTMENTS REQUIRED BY SECTION ONE THOUSAND FOUR HUNDRED TWO OF THIS CHAPTER OR PARAGRAPH THREE OF SUBSECTION (B) OF THIS SECTION, RESERVE INVESTMENTS UNDER SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAPTER AND INTERESTS IN A QUALIFIED TRUST, FREE FROM ANY LIEN OR PLEDGE, WHICH, WHEN VALUED IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER, SHALL AT LEAST EQUAL FIFTY PERCENT OF THE AGGREGATE AMOUNT OF ITS UNEARNED PREMIUM, LOSS AND LOSS ADJUSTMENT EXPENSE RESERVES AS SHOWN BY ITS LAST SWORN STATEMENT, ANNUAL OR QUARTERLY, ON FILE WITH THE SUPERINTENDENT. IF A FINANCIAL GUARANTY INSURANCE CORPORATION MAINTAINS CASH, INVESTMENTS REQUIRED BY SECTION ONE THOUSAND FOUR HUNDRED TWO OF THIS ARTICLE OR PARAGRAPH THREE OF SUBSECTION (B) OF THIS SECTION, RESERVE INVESTMENTS UNDER SUBSECTION (A) OF SECTION ONE THOUSAND FOUR HUNDRED FOUR OF THIS CHAPTER AND INTERESTS IN A QUALIFIED TRUST, FREE

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

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

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

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

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