

113TH CONGRESS
2D SESSION

H. R. 5421

AN ACT

To amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Financial Institution
3 Bankruptcy Act of 2014”.

4 **SEC. 2. GENERAL PROVISIONS RELATING TO COVERED FI-**
5 **NANCIAL CORPORATIONS.**

6 (a) DEFINITION.—Section 101 of title 11, United
7 States Code, is amended by inserting the following after
8 paragraph (9):

9 “(9A) The term ‘covered financial corporation’
10 means any corporation incorporated or organized
11 under any Federal or State law, other than a stock-
12 broker, a commodity broker, or an entity of the kind
13 specified in paragraph (2) or (3) of section 109(b),
14 that is—

15 “(A) a bank holding company, as defined
16 in section 2(a) of the Bank Holding Company
17 Act of 1956; or

18 “(B) a corporation that exists for the pri-
19 mary purpose of owning, controlling and financ-
20 ing its subsidiaries, that has total consolidated
21 assets of \$50,000,000,000 or greater, and for
22 which, in its most recently completed fiscal
23 year—

24 “(i) annual gross revenues derived by
25 the corporation and all of its subsidiaries
26 from activities that are financial in nature

(as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the corporation; or

“(ii) the consolidated assets of the corporation and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the corporation.”.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended by adding at the end the following:

“(l) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning a covered financial corporation.”.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

1 (1) in subsection (b)—

2 (A) in paragraph (2), by striking “or” at
3 the end;

4 (B) in paragraph (3)(B), by striking the
5 period at the end and inserting “; or”; and

6 (C) by adding at the end the following:

7 “(4) a covered financial corporation.”; and

8 (2) in subsection (d)—

9 (A) by striking “and” before “an unin-
10 sured State member bank”;

11 (B) by striking “or” before “a corpora-
12 tion”; and

13 (C) by inserting “, or a covered financial
14 corporation” after “Federal Deposit Insurance
15 Corporation Improvement Act of 1991”.

16 (d) CONVERSION TO CHAPTER 7.—Section 1112 of
17 title 11, United States Code, is amended by adding at the
18 end the following:

19 “(g) Notwithstanding section 109(b), the court may
20 convert a case under subchapter V to a case under chapter
21 7 if—

22 “(1) a transfer approved under section 1185
23 has been consummated;

24 “(2) the court has ordered the appointment of
25 a special trustee under section 1186; and

1 “(3) the court finds, after notice and a hearing,
2 that conversion is in the best interest of the credi-
3 tors and the estate.”.

4 (e)(1) Section 726(a)(1) of title 11, United States
5 Code, is amended by inserting after “first,” the following:
6 “in payment of any unpaid fees, costs, and expenses of
7 a special trustee appointed under section 1186, and then”.

8 (2) Section 1129(a) of title 11, United States Code,
9 is amended by inserting after paragraph (16) the fol-
10 lowing:

11 “(17) In a case under subchapter V, all payable
12 fees, costs, and expenses of the special trustee have
13 been paid or the plan provides for the payment of
14 all such fees, costs, and expenses on the effective
15 date of the plan.

16 “(18) In a case under subchapter V, confirma-
17 tion of the plan is not likely to cause serious adverse
18 effects on financial stability in the United States.”.

19 (f) Section 322(b)(2) of title 11, United States Code,
20 is amended by striking “The” and inserting “In cases
21 under subchapter V, the United States trustee shall rec-
22 ommend to the court, and in all other cases, the”.

1 **SEC. 3. LIQUIDATION, REORGANIZATION, OR RECAPITAL-**
 2 **IZATION OF A COVERED FINANCIAL COR-**
 3 **PORATION.**

4 Chapter 11 of title 11, United States Code, is amend-
 5 ed by adding at the end the following:

6 “SUBCHAPTER V—LIQUIDATION, REORGANIZA-
 7 TION, OR RECAPITALIZATION OF A COV-
 8 ERED FINANCIAL CORPORATION

9 **“§ 1181. Inapplicability of other sections**

10 “Sections 303 and 321(c) do not apply in a case
 11 under this subchapter concerning a covered financial cor-
 12 poration.

13 **“§ 1182. Definitions for this subchapter**

14 “In this subchapter, the following definitions shall
 15 apply:

16 “(1) The term ‘Board’ means the Board of
 17 Governors of the Federal Reserve System.

18 “(2) The term ‘bridge company’ means a newly
 19 formed corporation to which property of the estate
 20 may be transferred under section 1185(a) and the
 21 equity securities of which may be transferred to a
 22 special trustee under section 1186(a).

23 “(3) The term ‘capital structure debt’ means all
 24 unsecured debt of the debtor for borrowed money for
 25 which the debtor is the primary obligor, other than
 26 a qualified financial contract and other than debt se-

1 cured by a lien on property of the estate that is to
 2 be transferred to a bridge company pursuant to an
 3 order of the court under section 1185(a).

4 “(4) The term ‘contractual right’ means a con-
 5 tractual right of a kind defined in section 555, 556,
 6 559, 560, or 561.

7 “(5) The term ‘qualified financial contract’
 8 means any contract of a kind defined in paragraph
 9 (25), (38A), (47), or (53B) of section 101, section
 10 741(7), or paragraph (4), (5), (11), or (13) of sec-
 11 tion 761.

12 “(6) The term ‘special trustee’ means the trust-
 13 ee of a trust formed under section 1186(a)(1).

14 **“§ 1183. Commencement of a case concerning a cov-**
 15 **ered financial corporation**

16 “(a) A case under this subchapter concerning a cov-
 17 ered financial corporation may be commenced by the filing
 18 of a petition with the court—

19 “(1) by the debtor under section 301 only if the
 20 debtor states to the best of its knowledge under pen-
 21 alty of perjury in the petition that it is a covered fi-
 22 nancial corporation; or

23 “(2) by the Board only if the Board states to
 24 the best of its knowledge under penalty of perjury
 25 in the petition that—

1 “(A) the debtor is a covered financial cor-
2 poration that—

3 “(i) has incurred losses that will de-
4 plete all or substantially all of the capital
5 of the covered financial corporation, and
6 there is no reasonable prospect for the cov-
7 ered financial corporation to avoid such de-
8 pletion;

9 “(ii) is insolvent;

10 “(iii) is not paying, or is unable to
11 pay, the debts of the covered financial cor-
12 poration (other than debts subject to a
13 bona fide dispute as to liability or amount)
14 as they become due; or

15 “(iv) is likely to be in a financial con-
16 dition specified in clause (i), (ii), or (iii)
17 sufficiently soon such that the immediate
18 commencement of a case under this sub-
19 chapter is necessary to prevent serious ad-
20 verse effects on financial stability in the
21 United States; and

22 “(B) the commencement of a case under
23 this title and effecting a transfer under section
24 1185 is necessary to prevent serious adverse ef-
25 fects on financial stability in the United States.

1 “(b)(1) Unless the debtor consents to an order for
2 relief, the court shall hold a hearing on the Board’s peti-
3 tion under subsection (a)(2) as soon as practicable but not
4 later than 16 hours after the Board files such a petition,
5 with notice only to—

6 “(A) the covered financial corporation;

7 “(B) the Federal Deposit Insurance Corpora-
8 tion;

9 “(C) the Office of the Comptroller of the Cur-
10 rency of the Department of the Treasury; and

11 “(D) the Secretary of the Treasury.

12 “(2) Only the Board and the entities specified in
13 paragraph (1) and their counsel may participate in a hear-
14 ing described in this subsection. The Board or the trustee
15 may request that pleadings, hearings, transcripts, and or-
16 ders in connection with a hearing described in this sub-
17 section be sealed if their disclosure could create financial
18 instability in the United States.

19 “(3) All pleadings, hearings, transcripts, and orders
20 sealed under paragraph (2) shall be available to only the
21 court, the appellate panel, the covered financial corpora-
22 tion, the Federal Deposit Insurance Corporation, the Of-
23 fice of the Comptroller of the Currency of the Department
24 of the Treasury, the Secretary of the Treasury, and the
25 Board. Notwithstanding paragraph (2), if the case is dis-

1 missed, all court documents, including pleadings, hearings,
2 transcripts, and orders, shall be permanently sealed.

3 “(c)(1) The commencement of a case under sub-
4 section (a)(1) constitutes an order for relief under this
5 subchapter.

6 “(2) In a case commenced under subsection (a)(2),
7 after notice and hearing required under subsection (b) and
8 not later than 18 hours after the filing of the Board’s peti-
9 tion, the court shall enter—

10 “(A) an order for relief—

11 “(i) if the Board has shown at the hearing
12 under this subsection that the requirements
13 under subsection (a)(2) are supported by a pre-
14 ponderance of the evidence; or

15 “(ii) if the debtor consents to the Board’s
16 petition under subsection (a)(2); or

17 “(B) an order dismissing the case.

18 “(d)(1) The covered financial corporation or the
19 Board may appeal to the court of appeals from an order
20 entered by the court under subsection (c)(2) not later than
21 1 hour after the court enters such order, with notice only
22 to the entities specified in subsection (b)(1) and the
23 Board. Such order shall be stayed pending such appeal.

24 “(2) The appellate panel specified under section
25 298(c)(1) of title 28 for the judicial circuit in which the

1 case is pending shall hear the appeal under paragraph (1)
2 within 12 hours of the filing of the notice of appeal under
3 this subsection. The standard of review shall be abuse of
4 discretion. The appellate panel shall enter an order deter-
5 mining the matter that is the subject of the appeal not
6 later than 14 hours after the notice of appeal is filed.

7 “(3) The court may not, on account of an appeal
8 from an order for relief under section 1183(d)(1), delay
9 any proceeding under section 1185, except that the court
10 shall not authorize a transfer under section 1185 before
11 the determination of the appeal.

12 “(e) The members of the board of directors (or body
13 performing similar functions) of a covered financial com-
14 pany shall have no liability to shareholders, creditors or
15 other parties in interest for a good faith filing or con-
16 senting in good faith to a petition with respect to a case
17 under this subchapter, or for any reasonable action taken
18 in good faith in contemplation of or in connection with
19 such a petition or a transfer under section 1185 or section
20 1186, whether prior to or after commencement of the case.

21 “(f) Counsel to the debtor or the Board shall provide,
22 to the greatest extent practicable, sufficient confidential
23 notice to the Office of Court Services of the Administrative
24 Office of the United States Courts regarding the potential
25 commencement of a subchapter V case without disclosing

1 the identity of the potential debtor in order to allow such
2 office to randomly designate and ensure the ready avail-
3 ability of one of the bankruptcy judges designated under
4 section 298(b)(1) of title 28 to be available to preside over
5 such subchapter V case.

6 **“§ 1184. Regulators**

7 “The Board, the Securities Exchange Commission,
8 the Office of the Comptroller of the Currency of the De-
9 partment of the Treasury, and the Federal Deposit Insur-
10 ance Corporation may raise and may appear and be heard
11 on any issue in any case or proceeding under this sub-
12 chapter.

13 **“§ 1185. Special transfer of property of the estate**

14 “(a) On request of the trustee or the Board, and after
15 notice and a hearing that shall occur not less than 24
16 hours after the order for relief, the court may order a
17 transfer under this section of property of the estate, and
18 the assignment of executory contracts, unexpired leases,
19 and qualified financial contracts of the debtor, to a bridge
20 company. Upon the entry of an order approving such
21 transfer, any property transferred, and any executory con-
22 tracts, unexpired leases, and qualified financial contracts
23 assigned under such order shall no longer be property of
24 the estate. Except as provided under this section, the pro-

1 visions of sections 363 and 365 shall apply to a transfer
2 and assignment under this section.

3 “(b) Unless the court orders otherwise, notice of a
4 request for an order under subsection (a) shall consist of
5 electronic or telephonic notice of not less than 24 hours
6 to—

7 “(1) the debtor;

8 “(2) the holders of the 20 largest secured
9 claims against the debtor;

10 “(3) the holders of the 20 largest unsecured
11 claims against the debtor;

12 “(4) counterparties to any debt, executory con-
13 tract, unexpired lease, and qualified financial con-
14 tract requested to be transferred under this section;

15 “(5) the Board;

16 “(6) the Federal Deposit Insurance Corpora-
17 tion;

18 “(7) the Secretary of the Treasury and the Of-
19 fice of the Comptroller of the Currency of the Treas-
20 ury;

21 “(8) the Securities and Exchange Commission;

22 “(9) the United States trustee or bankruptcy
23 administrator; and

24 “(10) each primary financial regulatory agency,
25 as defined in section 2(12) of the Dodd-Frank Wall

1 Street Reform and Consumer Protection Act, with
2 respect to any affiliate the equity securities of which
3 are proposed to be transferred under this section.

4 “(c) The court may not order a transfer under this
5 section unless the court determines, based upon a prepon-
6 derance of the evidence, that—

7 “(1) the transfer under this section is necessary
8 to prevent serious adverse effects on financial sta-
9 bility in the United States;

10 “(2) the transfer does not provide for the as-
11 sumption of any capital structure debt by the bridge
12 company;

13 “(3) the transfer does not provide for the trans-
14 fer to the bridge company of any property of the es-
15 tate that is subject to a lien securing a debt, execu-
16 tory contract, unexpired lease or agreement of the
17 debtor unless—

18 “(A)(i) the bridge company assumes such
19 debt, executory contract, unexpired lease or
20 agreement, including any claims arising in re-
21 spect thereof that would not be allowed secured
22 claims under section 506(a)(1) and after giving
23 effect to such transfer, such property remains
24 subject to the lien securing such debt, executory
25 contract, unexpired lease or agreement; and

1 “(ii) the court has determined that as-
2 sumption of such debt, executory contract, un-
3 expired lease or agreement by the bridge com-
4 pany is in the best interests of the estate; or

5 “(B) such property is being transferred to
6 the bridge company in accordance with the pro-
7 visions of section 363;

8 “(4) the transfer does not provide for the as-
9 sumption by the bridge company of any debt, execu-
10 tory contract, unexpired lease or agreement of the
11 debtor secured by a lien on property in which the es-
12 tate has an interest unless the transfer provides for
13 such property to be transferred to the bridge com-
14 pany in accordance with paragraph (3)(A) of this
15 subsection;

16 “(5) the transfer does not provide for the trans-
17 fer of the equity of the debtor;

18 “(6) the party requesting the transfer under
19 this subsection has demonstrated that the bridge
20 company is not likely to fail to meet the obligations
21 of any debt, executory contract, qualified financial
22 contract, or unexpired lease assumed and assigned
23 to the bridge company;

24 “(7) the transfer provides for the transfer to a
25 special trustee all of the equity securities in the

1 bridge company and appointment of a special trustee
2 in accordance with section 1186;

3 “(8) after giving effect to the transfer, ade-
4 quate provision has been made for the fees, costs,
5 and expenses of the estate and special trustee; and

6 “(9) the bridge company will have governing
7 documents, and initial directors and senior officers,
8 that are in the best interest of creditors and the es-
9 tate.

10 “(d) Immediately before a transfer under the section,
11 the bridge company that is the recipient of the transfer
12 shall—

13 “(1) not have any property, executory con-
14 tracts, unexpired leases, or debts, other than any
15 property acquired or executory contracts, unexpired
16 leases, or debts assumed when acting as a transferee
17 of a transfer under this section; and

18 “(2) have equity securities that are property of
19 the estate, which may be sold or distributed in ac-
20 cordance with this title.

21 **“§ 1186. Special trustee**

22 “(a)(1) An order approving a transfer under section
23 1185 shall require the trustee to transfer to a qualified
24 and independent special trustee, who is appointed by the
25 court, all of the equity securities in the bridge company

1 that is the recipient of a transfer under section 1185 to
2 hold in trust for the sole benefit of the estate, subject to
3 satisfaction of the special trustee's fees, costs, and ex-
4 penses. The trust of which the special trustee is the trust-
5 ee shall be a newly formed trust governed by a trust agree-
6 ment approved by the court as in the best interests of the
7 estate, and shall exist for the sole purpose of holding and
8 administering, and shall be permitted to dispose of, the
9 equity securities of the bridge company in accordance with
10 the trust agreement.

11 “(2) In connection with the hearing to approve a
12 transfer under section 1185, the trustee shall confirm to
13 the court that the Board has been consulted regarding the
14 identity of the proposed special trustee and advise the
15 court of the results of such consultation.

16 “(b) The trust agreement governing the trust shall
17 provide—

18 “(1) for the payment of the fees, costs, ex-
19 penses, and indemnities of the special trustee from
20 the assets of the debtor's estate;

21 “(2) that the special trustee provide—

22 “(A) quarterly reporting to the estate,
23 which shall be filed with the court; and

24 “(B) information about the bridge com-
25 pany reasonably requested by a party in inter-

1 est to prepare a disclosure statement for a plan
2 providing for distribution of any securities of
3 the bridge company if such information is nec-
4 essary to prepare such disclosure statement;

5 “(3) that for as long as the equity securities of
6 the bridge company are held by the trust, the special
7 trustee shall file a notice with the court in connec-
8 tion with—

9 “(A) any change in a director or senior of-
10 ficer of the bridge company;

11 “(B) any modification to the governing
12 documents of the bridge company; and

13 “(C) any material corporate action of the
14 bridge company, including—

15 “(i) recapitalization;

16 “(ii) a material borrowing;

17 “(iii) termination of an intercompany
18 debt or guarantee;

19 “(iv) a transfer of a substantial por-
20 tion of the assets of the bridge company;

21 or

22 “(v) the issuance or sale of any secu-
23 rities of the bridge company;

24 “(4) that any sale of any equity securities of
25 the bridge company shall not be consummated until

1 the special trustee consults with the Federal Deposit
2 Insurance Corporation and the Board regarding
3 such sale and discloses the results of such consulta-
4 tion with the court;

5 “(5) that, subject to reserves for payments per-
6 mitted under paragraph (1) provided for in the trust
7 agreement, the proceeds of the sale of any equity se-
8 curities of the bridge company by the special trustee
9 be held in trust for the benefit of or transferred to
10 the estate;

11 “(6) the process and guidelines for the replace-
12 ment of the special trustee; and

13 “(7) that the property held in trust by the spe-
14 cial trustee is subject to distribution in accordance
15 with subsection (c).

16 “(c)(1) The special trustee shall distribute the assets
17 held in trust—

18 “(A) if the court confirms a plan in the case,
19 in accordance with the plan on the effective date of
20 the plan; or

21 “(B) if the case is converted to a case under
22 chapter 7, as ordered by the court.

23 “(2) As soon as practicable after a final distribution
24 under paragraph (1), the office of the special trustee shall

1 terminate, except as may be necessary to wind up and con-
 2 clude the business and financial affairs of the trust.

3 “(d) After a transfer to the special trustee under this
 4 section, the special trustee shall be subject only to applica-
 5 ble nonbankruptcy law, and the actions and conduct of
 6 the special trustee shall no longer be subject to approval
 7 by the court in the case under this subchapter.

8 **“§ 1187. Temporary and supplemental automatic stay;**
 9 **assumed debt**

10 “(a)(1) A petition filed under section 1183 operates
 11 as a stay, applicable to all entities, of the termination, ac-
 12 celeration, or modification of any debt, contract, lease, or
 13 agreement of the kind described in paragraph (2), or of
 14 any right or obligation under any such debt, contract,
 15 lease, or agreement, solely because of—

16 “(A) a default by the debtor under any such
 17 debt, contract, lease, or agreement; or

18 “(B) a provision in such debt, contract, lease,
 19 or agreement, or in applicable nonbankruptcy law,
 20 that is conditioned on—

21 “(i) the insolvency or financial condition of
 22 the debtor at any time before the closing of the
 23 case;

24 “(ii) the commencement of a case under
 25 this title concerning the debtor;

1 “(iii) the appointment of or taking posses-
2 sion by a trustee in a case under this title con-
3 cerning the debtor or by a custodian before the
4 commencement of the case; or

5 “(iv) a credit rating agency rating, or ab-
6 sence or withdrawal of a credit rating agency
7 rating—

8 “(I) of the debtor at any time after
9 the commencement of the case;

10 “(II) of an affiliate during the period
11 from the commencement of the case until
12 48 hours after such order is entered;

13 “(III) of the bridge company while the
14 trustee or the special trustee is a direct or
15 indirect beneficial holder of more than 50
16 percent of the equity securities of—

17 “(aa) the bridge company; or

18 “(bb) the affiliate, if all of the di-
19 rect or indirect interests in the affil-
20 iate that are property of the estate
21 are transferred under section 1185; or

22 “(IV) of an affiliate while the trustee
23 or the special trustee is a direct or indirect
24 beneficial holder of more than 50 percent
25 of the equity securities of—

1 “(aa) the bridge company; or

2 “(bb) the affiliate, if all of the di-
3 rect or indirect interests in the affil-
4 iate that are property of the estate
5 are transferred under section 1185.

6 “(2) A debt, contract, lease, or agreement described
7 in this paragraph is—

8 “(A) any debt (other than capital structure
9 debt), executory contract, or unexpired lease of the
10 debtor (other than a qualified financial contract);

11 “(B) any agreement under which the debtor
12 issued or is obligated for debt (other than capital
13 structure debt);

14 “(C) any debt, executory contract, or unexpired
15 lease of an affiliate (other than a qualified financial
16 contract); or

17 “(D) any agreement under which an affiliate
18 issued or is obligated for debt.

19 “(3) The stay under this subsection terminates—

20 “(A) for the benefit of the debtor, upon the ear-
21 liest of—

22 “(i) 48 hours after the commencement of
23 the case;

24 “(ii) assumption of the debt, contract,
25 lease, or agreement by the bridge company

1 under an order authorizing a transfer under
2 section 1185;

3 “(iii) a final order of the court denying the
4 request for a transfer under section 1185; or

5 “(iv) the time the case is dismissed; and

6 “(B) for the benefit of an affiliate, upon the
7 earliest of—

8 “(i) the entry of an order authorizing a
9 transfer under section 1185 in which the direct
10 or indirect interests in the affiliate that are
11 property of the estate are not transferred under
12 section 1185;

13 “(ii) a final order by the court denying the
14 request for a transfer under section 1185;

15 “(iii) 48 hours after the commencement of
16 the case if the court has not ordered a transfer
17 under section 1185; or

18 “(iv) the time the case is dismissed.

19 “(4) Subsections (d), (e), (f), and (g) of section 362
20 apply to a stay under this subsection.

21 “(b) A debt, executory contract (other than a quali-
22 fied financial contract), or unexpired lease of the debtor,
23 or an agreement under which the debtor has issued or is
24 obligated for any debt, may be assumed by a bridge com-
25 pany in a transfer under section 1185 notwithstanding

1 any provision in an agreement or in applicable nonbank-
2 ruptcy law that—

3 “(1) prohibits, restricts, or conditions the as-
4 signment of the debt, contract, lease, or agreement;
5 or

6 “(2) accelerates, terminates, or modifies, or
7 permits a party other than the debtor to terminate
8 or modify, the debt, contract, lease, or agreement on
9 account of—

10 “(A) the assignment of the debt, contract,
11 lease, or agreement; or

12 “(B) a change in control of any party to
13 the debt, contract, lease, or agreement.

14 “(c)(1) A debt, contract, lease, or agreement of the
15 kind described in subparagraph (A) or (B) of subsection
16 (a)(2) may not be accelerated, terminated, or modified,
17 and any right or obligation under such debt, contract,
18 lease, or agreement may not be accelerated, terminated,
19 or modified, as to the bridge company solely because of
20 a provision in the debt, contract, lease, or agreement or
21 in applicable nonbankruptcy law—

22 “(A) of the kind described in subsection
23 (a)(1)(B) as applied to the debtor;

1 “(B) that prohibits, restricts, or conditions the
2 assignment of the debt, contract, lease, or agree-
3 ment; or

4 “(C) that accelerates, terminates, or modifies,
5 or permits a party other than the debtor to termi-
6 nate or modify, the debt, contract, lease or agree-
7 ment on account of—

8 “(i) the assignment of the debt, contract,
9 lease, or agreement; or

10 “(ii) a change in control of any party to
11 the debt, contract, lease, or agreement.

12 “(2) If there is a default by the debtor under a provi-
13 sion other than the kind described in paragraph (1) in
14 a debt, contract, lease or agreement of the kind described
15 in subparagraph (A) or (B) of subsection (a)(2), the
16 bridge company may assume such debt, contract, lease,
17 or agreement only if the bridge company—

18 “(A) shall cure the default;

19 “(B) compensates, or provides adequate assur-
20 ance in connection with a transfer under section
21 1185 that the bridge company will promptly com-
22 pensate, a party other than the debtor to the debt,
23 contract, lease, or agreement, for any actual pecu-
24 niary loss to the party resulting from the default;
25 and

1 “(C) provides adequate assurance in connection
2 with a transfer under section 1185 of future per-
3 formance under the debt, contract, lease, or agree-
4 ment, as determined by the court under section
5 1185(c)(4).

6 **“§ 1188. Treatment of qualified financial contracts**
7 **and affiliate contracts**

8 “(a) Notwithstanding sections 362(b)(6), 362(b)(7),
9 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and
10 561, a petition filed under section 1183 operates as a stay,
11 during the period specified in section 1187(a)(3)(A), ap-
12 plicable to all entities, of the exercise of a contractual
13 right—

14 “(1) to cause the modification, liquidation, ter-
15 mination, or acceleration of a qualified financial con-
16 tract of the debtor or an affiliate;

17 “(2) to offset or net out any termination value,
18 payment amount, or other transfer obligation arising
19 under or in connection with a qualified financial con-
20 tract of the debtor or an affiliate; or

21 “(3) under any security agreement or arrange-
22 ment or other credit enhancement forming a part of
23 or related to a qualified financial contract of the
24 debtor or an affiliate.

1 “(b)(1) During the period specified in section
2 1187(a)(3)(A), the trustee or the affiliate shall perform
3 all payment and delivery obligations under such qualified
4 financial contract of the debtor or the affiliate, as the case
5 may be, that become due after the commencement of the
6 case. The stay provided under subsection (a) terminates
7 as to a qualified financial contract of the debtor or an
8 affiliate immediately upon the failure of the trustee or the
9 affiliate, as the case may be, to perform any such obliga-
10 tion during such period.

11 “(2) Any failure by a counterparty to any qualified
12 financial contract of the debtor or any affiliate to perform
13 any payment or delivery obligation under such qualified
14 financial contract, including during the pendency of the
15 stay provided under subsection (a), shall constitute a
16 breach of such qualified financial contract by the
17 counterparty.

18 “(c) Subject to the court’s approval, a qualified finan-
19 cial contract between an entity and the debtor may be as-
20 signed to or assumed by the bridge company in a transfer
21 under section 1185 if and only if—

22 “(1) all qualified financial contracts between
23 the entity and the debtor are assigned to and as-
24 sumed by the bridge company in the transfer under
25 section 1185;

1 “(2) all claims of the entity against the debtor
2 under any qualified financial contract between the
3 entity and the debtor (other than any claim that,
4 under the terms of the qualified financial contract,
5 is subordinated to the claims of general unsecured
6 creditors) are assigned to and assumed by the bridge
7 company;

8 “(3) all claims of the debtor against the entity
9 under any qualified financial contract between the
10 entity and the debtor are assigned to and assumed
11 by the bridge company; and

12 “(4) all property securing or any other credit
13 enhancement furnished by the debtor for any quali-
14 fied financial contract described in paragraph (1) or
15 any claim described in paragraph (2) or (3) under
16 any qualified financial contract between the entity
17 and the debtor is assigned to and assumed by the
18 bridge company.

19 “(d) Notwithstanding any provision of a qualified fi-
20 nancial contract or of applicable nonbankruptcy law, a
21 qualified financial contract of the debtor that is assumed
22 or assigned in a transfer under section 1185 may not be
23 accelerated, terminated, or modified, after the entry of the
24 order approving a transfer under section 1185, and any
25 right or obligation under the qualified financial contract

1 may not be accelerated, terminated, or modified, after the
2 entry of the order approving a transfer under section 1185
3 solely because of a condition described in section
4 1187(c)(1), other than a condition of the kind specified
5 in section 1187(b) that occurs after property of the estate
6 no longer includes a direct beneficial interest or an indi-
7 rect beneficial interest through the special trustee, in more
8 than 50 percent of the equity securities of the bridge com-
9 pany.

10 “(e) Notwithstanding any provision of any agreement
11 or in applicable nonbankruptcy law, an agreement of an
12 affiliate (including an executory contract, an unexpired
13 lease, qualified financial contract, or an agreement under
14 which the affiliate issued or is obligated for debt) and any
15 right or obligation under such agreement may not be ac-
16 celerated, terminated, or modified, solely because of a con-
17 dition described in section 1187(c)(1), other than a condi-
18 tion of the kind specified in section 1187(b) that occurs
19 after the bridge company is no longer a direct or indirect
20 beneficial holder of more than 50 percent of the equity
21 securities of the affiliate, at any time after the commence-
22 ment of the case if—

23 “(1) all direct or indirect interests in the affil-
24 iate that are property of the estate are transferred

1 under section 1185 to the bridge company within the
2 period specified in subsection (a);

3 “(2) the bridge company assumes—

4 “(A) any guarantee or other credit en-
5 hancement issued by the debtor relating to the
6 agreement of the affiliate; and

7 “(B) any right of setoff, netting arrange-
8 ment, or debt of the debtor that directly arises
9 out of or directly relates to the guarantee or
10 credit enhancement; and

11 “(3) any property of the estate that directly
12 serves as collateral for the guarantee or credit en-
13 hancement is transferred to the bridge company.

14 **“§ 1189. Licenses, permits, and registrations**

15 “(a) Notwithstanding any otherwise applicable non-
16 bankruptcy law, if a request is made under section 1185
17 for a transfer of property of the estate, any Federal, State,
18 or local license, permit, or registration that the debtor or
19 an affiliate had immediately before the commencement of
20 the case and that is proposed to be transferred under sec-
21 tion 1185 may not be accelerated, terminated, or modified
22 at any time after the request solely on account of—

23 “(1) the insolvency or financial condition of the
24 debtor at any time before the closing of the case;

1 “(2) the commencement of a case under this
2 title concerning the debtor;

3 “(3) the appointment of or taking possession by
4 a trustee in a case under this title concerning the
5 debtor or by a custodian before the commencement
6 of the case; or

7 “(4) a transfer under section 1185.

8 “(b) Notwithstanding any otherwise applicable non-
9 bankruptcy law, any Federal, State, or local license, per-
10 mit, or registration that the debtor had immediately before
11 the commencement of the case that is included in a trans-
12 fer under section 1185 shall be valid and all rights and
13 obligations thereunder shall vest in the bridge company.

14 **“§ 1190. Exemption from securities laws**

15 “For purposes of section 1145, a security of the
16 bridge company shall be deemed to be a security of a suc-
17 cessor to the debtor under a plan if the court approves
18 the disclosure statement for the plan as providing ade-
19 quate information (as defined in section 1125(a)) about
20 the bridge company and the security.

21 **“§ 1191. Inapplicability of certain avoiding powers**

22 “A transfer made or an obligation incurred by the
23 debtor to an affiliate prior to or after the commencement
24 of the case, including any obligation released by the debtor
25 or the estate to or for the benefit of an affiliate, in con-

1 temptation of or in connection with a transfer under sec-
 2 tion 1185 is not avoidable under section 544, 547,
 3 548(a)(1)(B), or 549, or under any similar nonbankruptcy
 4 law.

5 **“§ 1192. Consideration of financial stability**

6 “The court may consider the effect that any decision
 7 in connection with this subchapter may have on financial
 8 stability in the United States.”.

9 **SEC. 4. AMENDMENTS TO TITLE 28, UNITED STATES CODE.**

10 (a) AMENDMENT TO CHAPTER 13.—Chapter 13 of
 11 title 28, United States Code, is amended by adding at the
 12 end the following:

13 **“§ 298. Judge for a case under subchapter V of chap-**
 14 **ter 11 of title 11**

15 “(a) Notwithstanding section 295, the Chief Justice
 16 of the United States shall designate not fewer than 3
 17 judges of the courts of appeals in not fewer than 4 circuits
 18 to serve on an appellate panel to be available to hear an
 19 appeal under section 1183 of title 11 in a case under such
 20 title concerning a covered financial corporation. Appellate
 21 judges may request to be considered by the Chief Justice
 22 of the United States for such designation.

23 “(b)(1) Notwithstanding section 295, the Chief Jus-
 24 tice of the United States shall designate not fewer than
 25 10 bankruptcy judges to be available to hear a case under

1 subchapter V of chapter 11 of title 11. Bankruptcy judges
2 may request to be considered by the Chief Justice of the
3 United States for such designation.

4 “(2) Notwithstanding section 155, a case under sub-
5 chapter V of chapter 11 of title 11 shall be heard under
6 section 157 by a bankruptcy judge designated under para-
7 graph (1), who shall be assigned to hear such case by the
8 chief judge of the court of appeals for the circuit embrac-
9 ing the district in which the case is pending. To the great-
10 est extent practicable, the approvals required under sec-
11 tion 155 should be obtained.

12 “(3) If the bankruptcy judge assigned to hear a case
13 under paragraph (2) is not assigned to the district in
14 which the case is pending, the bankruptcy judge shall be
15 temporarily assigned to the district.

16 “(c)(1) The court of appeals shall have jurisdiction
17 of appeals from all orders for relief and orders of dismissal
18 under section 1183 of title 11.

19 “(2) Notwithstanding section 295, in an appeal under
20 paragraph (1) in a case under title 11 concerning a cov-
21 ered financial corporation shall be heard by—

22 “(A) 3 judges selected from the appellate panel
23 designated under subsection (a); or

24 “(B) if the 3 judges of such panel are not im-
25 mediately available to hear the case, 3 judges des-

1 ignated under subsection (a) from another circuit
2 and assigned by the Chief Justice of the United
3 States to hear the case.

4 “(3) If any of the judges of the appellate panel speci-
5 fied in paragraph (2) is not assigned to the circuit in
6 which the appeal is pending, the judges shall be tempo-
7 rarily assigned to the circuit.

8 “(4) A case under subchapter V of chapter 11 of title
9 11, and all proceedings in the case, shall take place in
10 the district in which the case is pending.

11 “(d) In this section, the term ‘covered financial cor-
12 poration’ has the meaning given that term in section
13 101(9A) of title 11.”.

14 (b) AMENDMENT TO SECTION 1334.—Section 1334
15 of title 28, United States Code, is amended by adding at
16 the end the following:

17 “(f) This section does not grant jurisdiction to the
18 district court after a transfer pursuant to an order under
19 section 1185 of title 11 of any proceeding related to a spe-
20 cial trustee appointed, or to a bridge company formed, in
21 connection with a case under subchapter V of chapter 11
22 of title 11.”.

23 (c) TECHNICAL AND CONFORMING AMENDMENT.—
24 The table of sections for chapter 13 of title 28, United

1 States Code, is amended by adding at the end the fol-
 2 lowing:

“298. Judge for a case under subchapter V of chapter 11 of title 11.”.

Passed the House of Representatives December 1,
 2014.

Attest:

Clerk.

113TH CONGRESS
2^D SESSION

H. R. 5421

AN ACT

To amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.