

Union Calendar No. 470

113TH CONGRESS
2D SESSION

H. R. 5421

[Report No. 113–630]

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 2014

Mr. BACHUS (for himself, Mr. GOODLATTE, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

DECEMBER 1, 2014

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Institution
5 Bankruptcy Act of 2014”.

6 **SEC. 2. GENERAL PROVISIONS RELATING TO COVERED FI-**
7 **NANCIAL CORPORATIONS.**

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

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

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

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

1 “(i) annual gross revenues derived by
2 the corporation and all of its subsidiaries
3 from activities that are financial in nature
4 (as defined in section 4(k) of the Bank
5 Holding Company Act of 1956) and, if ap-
6 plicable, from the ownership or control of
7 one or more insured depository institu-
8 tions, represents 85 percent or more of the
9 consolidated annual gross revenues of the
10 corporation; or

11 “(ii) the consolidated assets of the
12 corporation and all of its subsidiaries re-
13 lated to activities that are financial in na-
14 ture (as defined in section 4(k) of the
15 Bank Holding Company Act of 1956) and,
16 if applicable, related to the ownership or
17 control of one or more insured depository
18 institutions, represents 85 percent or more
19 of the consolidated assets of the corpora-
20 tion.”.

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

1 “(l) Subchapter V of chapter 11 of this title applies
2 only in a case under chapter 11 concerning a covered fi-
3 nancial corporation.”.

4 (c) WHO MAY BE A DEBTOR.—Section 109 of title
5 11, United States Code, is amended—

6 (1) in subsection (b)—

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

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

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

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

13 (2) in subsection (d)—

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

16 (B) by striking “or” before “a corpora-
17 tion”; and

18 (C) by inserting “, or a covered financial
19 corporation” after “Federal Deposit Insurance
20 Corporation Improvement Act of 1991”.

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

1 “(g) Notwithstanding section 109(b), the court may
2 convert a case under subchapter V to a case under chapter
3 7 if—

4 “(1) a transfer approved under section 1185
5 has been consummated;

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

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

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

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

18 “(17) In a case under subchapter V, all payable
19 fees, costs, and expenses of the special trustee have
20 been paid or the plan provides for the payment of
21 all such fees, costs, and expenses on the effective
22 date of the plan.

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

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

5 **SEC. 3. LIQUIDATION, REORGANIZATION, OR RECAPITAL-**
 6 **IZATION OF A COVERED FINANCIAL COR-**
 7 **PORATION.**

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

10 “SUBCHAPTER V—LIQUIDATION, REORGANIZA-
 11 TION, OR RECAPITALIZATION OF A COV-
 12 ERED FINANCIAL CORPORATION

13 “§ 1181. Inapplicability of other sections

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

17 “§ 1182. Definitions for this subchapter

18 “In this subchapter, the following definitions shall
 19 apply:

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

22 “(2) The term ‘bridge company’ means a newly
 23 formed corporation to which property of the estate
 24 may be transferred under section 1185(a) and the

1 equity securities of which may be transferred to a
2 special trustee under section 1186(a).

3 “(3) The term ‘capital structure debt’ means all
4 unsecured debt of the debtor for borrowed money,
5 other than a qualified financial contract, for which
6 the debtor is the primary obligor other than debt se-
7 cured by a lien on property of the estate that is to
8 be transferred to a bridge company pursuant to an
9 order of the court under section 1185(a).

10 “(4) The term ‘contractual right’ means a con-
11 tractual right of a kind defined in section 555, 556,
12 559, 560, or 561.

13 “(5) The term ‘qualified financial contract’
14 means any contract of a kind defined in paragraph
15 (25), (38A), (47), or (53B) of section 101, section
16 741(7), or paragraph (4), (5), (11), or (13) of sec-
17 tion 761.

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

20 **“§ 1183. Commencement of a case concerning a cov-**
21 **ered financial corporation**

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

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

5 “(2) by the Board only if the Board states to
6 the best of its knowledge under penalty of perjury
7 in the petition that—

8 “(A) the debtor is a covered financial cor-
9 poration that—

10 “(i) has incurred losses that will de-
11 plete all or substantially all of the capital
12 of the covered financial corporation, and
13 there is no reasonable prospect for the cov-
14 ered financial corporation to avoid such de-
15 pletion;

16 “(ii) is insolvent;

17 “(iii) is not paying, or is unable to
18 pay, the debts of the covered financial cor-
19 poration (other than debts subject to a
20 bona fide dispute as to liability or amount)
21 as they become due; or

22 “(iv) is likely to be in a financial con-
23 dition specified in clause (i), (ii), or (iii)
24 sufficiently soon such that the immediate
25 commencement of a case under this sub-

1 chapter is necessary to prevent serious ad-
2 verse effects on financial stability in the
3 United States; and

4 “(B) the commencement of a case under
5 this title and effecting a transfer under section
6 1185 is necessary to prevent serious adverse ef-
7 fects on financial stability in the United States.

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

13 “(A) the covered financial corporation;

14 “(B) the Federal Deposit Insurance Corpora-
15 tion;

16 “(C) the Office of the Comptroller of the Cur-
17 rency of the Department of the Treasury; and

18 “(D) the Secretary of the Treasury.

19 “(2) Only the Board and the entities specified in
20 paragraph (1) and their counsel may participate in a hear-
21 ing described in this subsection. The Board or the trustee
22 may request that pleadings, hearings, transcripts, and or-
23 ders in connection with a hearing described in this sub-
24 section be sealed if their disclosure could create financial
25 instability in the United States.

1 “(3) All pleadings, hearings, transcripts, and orders
2 sealed under paragraph (2) shall be available to only the
3 court, the appellate panel, the covered financial corpora-
4 tion, the Federal Deposit Insurance Corporation, the Of-
5 fice of the Comptroller of the Currency of the Department
6 of the Treasury, the Secretary of the Treasury, and the
7 Board. Notwithstanding paragraph (2), if the case is dis-
8 missed, all court documents, including pleadings, hearings,
9 transcripts, and orders, shall be permanently sealed.

10 “(c)(1) The commencement of a case under sub-
11 section (a)(1) constitutes an order for relief under this
12 subchapter.

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

17 “(A) an order for relief—

18 “(i) if the Board has shown at the hearing
19 under this subsection that the requirements
20 under subsection (a)(2) are supported by a pre-
21 ponderance of the evidence; or

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

24 “(B) an order dismissing the case.

1 “(d)(1) The covered financial corporation or the
2 Board may appeal to the court of appeals from an order
3 entered by the court under subsection (c)(2) not later than
4 1 hour after the court enters such order, with notice only
5 to the entities specified in subsection (b)(1) and the
6 Board. Such order shall be stayed pending such appeal.

7 “(2) The appellate panel specified under section
8 298(c)(1) of title 28 for the judicial circuit in which the
9 case is pending shall hear the appeal under paragraph (1)
10 within 12 hours of the filing of the notice of appeal under
11 this subsection. The standard of review shall be abuse of
12 discretion. The appellate panel shall enter an order deter-
13 mining the matter that is the subject of the appeal not
14 later than 14 hours after the notice of appeal is filed.

15 “(3) The court may not, on account of an appeal
16 from an order for relief under section 1183(d)(1), delay
17 any proceeding under section 1185, except that the court
18 shall not authorize a transfer under section 1185 before
19 the determination of the appeal.

20 “(e) The members of the board of directors (or body
21 performing similar functions) of a covered financial com-
22 pany shall have no liability to shareholders, creditors or
23 other parties in interest for a good faith filing or con-
24 senting in good faith to a petition with respect to a case
25 under this subchapter, or for any reasonable action taken

1 in good faith in contemplation of or in connection with
2 such a petition or a transfer under section 1185 or section
3 1186, whether prior to or after commencement of the case.

4 “(f) Counsel to the debtor or the Board shall provide,
5 to the greatest extent practicable, sufficient confidential
6 notice to the Office of Court Services of the Administrative
7 Office of the United States Courts regarding the potential
8 commencement of a subchapter V case without disclosing
9 the identity of the potential debtor in order to allow such
10 office to randomly designate and ensure the ready avail-
11 ability of one of the bankruptcy judges designated under
12 section 298(b)(1) of title 28 to be available to preside over
13 such subchapter V case.

14 **“§ 1184. Regulators**

15 “The Board, the Securities Exchange Commission,
16 the Office of the Comptroller of the Currency of the De-
17 partment of the Treasury, and the Federal Deposit Insur-
18 ance Corporation may raise and may appear and be heard
19 on any issue in any case or proceeding under this sub-
20 chapter.

21 **“§ 1185. Special transfer of property of the estate**

22 “(a) On request of the trustee or the Board, and after
23 notice and a hearing that shall occur not less than 24
24 hours after the order for relief, the court may order a
25 transfer under this section of property of the estate, and

1 the assignment of executory contracts, unexpired leases,
2 and qualified financial contracts of the debtor, to a bridge
3 company. Upon the entry of an order approving such
4 transfer, any property transferred, and any executory con-
5 tracts, unexpired leases, and qualified financial contracts
6 assigned under such order shall no longer be property of
7 the estate. Except as provided under this section, the pro-
8 visions of sections 363 and 365 shall apply to a transfer
9 and assignment under this section.

10 “(b) Unless the court orders otherwise, notice of a
11 request for an order under subsection (a) shall consist of
12 electronic or telephonic notice of not less than 24 hours
13 to—

14 “(1) the debtor;

15 “(2) the holders of the 20 largest secured
16 claims against the debtor;

17 “(3) the holders of the 20 largest unsecured
18 claims against the debtor;

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

22 “(5) the Board;

23 “(6) the Federal Deposit Insurance Corpora-
24 tion;

1 “(7) the Secretary of the Treasury and the Of-
2 fice of the Comptroller of the Currency of the Treas-
3 ury;

4 “(8) the Securities and Exchange Commission;

5 “(9) the United States trustee or bankruptcy
6 administrator; and

7 “(10) each primary financial regulatory agency,
8 as defined in section 2(12) of the Dodd-Frank Wall
9 Street Reform and Consumer Protection Act, with
10 respect to any affiliate the equity securities of which
11 are proposed to be transferred under this section.

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

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

18 “(2) the transfer does not provide for the as-
19 sumption of any capital structure debt by the bridge
20 company;

21 “(3) the transfer does not provide for the trans-
22 fer to the bridge company of any property of the es-
23 tate that is subject to a lien securing a debt, execu-
24 tory contract, unexpired lease or agreement of the
25 debtor unless—

1 “(A)(i) the bridge company assumes such
2 debt, executory contract, unexpired lease or
3 agreement, including any claims arising in re-
4 spect thereof that would not be allowed secured
5 claims under section 506(a)(1) and after giving
6 effect to such transfer, such property remains
7 subject to the lien securing such debt, executory
8 contract, unexpired lease or agreement; and

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

13 “(B) such property is being transferred to
14 the bridge company in accordance with the pro-
15 visions of section 363;

16 “(4) the transfer does not provide for the as-
17 sumption by the bridge company of any debt, execu-
18 tory contract, unexpired lease or agreement of the
19 debtor secured by a lien on property in which the es-
20 tate has an interest unless the transfer provides for
21 such property to be transferred to the bridge com-
22 pany in accordance with paragraph (3)(A) of this
23 subsection;

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

1 “(6) the party requesting the transfer under
2 this subsection has demonstrated that the bridge
3 company is not likely to fail to meet the obligations
4 of any debt, executory contract, qualified financial
5 contract, or unexpired lease assumed and assigned
6 to the bridge company;

7 “(7) the transfer provides for the transfer to a
8 special trustee all of the equity securities in the
9 bridge company and appointment of a special trustee
10 in accordance with section 1186;

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

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

18 “(d) Immediately before a transfer under the section,
19 the bridge company that is the recipient of the transfer
20 shall—

21 “(1) not have any property, executory con-
22 tracts, unexpired leases, or debts, other than any
23 property acquired or executory contracts, unexpired
24 leases, or debts assumed when acting as a transferee
25 of a transfer under this section; and

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

4 **“§ 1186. Special trustee**

5 “(a)(1) An order approving a transfer under section
6 1185 shall require the trustee to transfer to a qualified
7 and independent special trustee all of the equity securities
8 in the bridge company that is the recipient of a transfer
9 under section 1185 to hold in trust for the sole benefit
10 of the estate, subject to satisfaction of the special trustee’s
11 fees, costs, and expenses. The trust of which the special
12 trustee is the trustee shall be a newly formed trust gov-
13 erned by a trust agreement approved by the court as in
14 the best interests of the estate, and shall exist for the sole
15 purpose of holding and administering, and shall be per-
16 mitted to dispose of, the equity securities of the bridge
17 company in accordance with the trust agreement.

18 “(2) In connection with the hearing to approve a
19 transfer under section 1185, the trustee shall confirm to
20 the court that the Board has been consulted regarding the
21 identity of the proposed special trustee and advise the
22 court of the results of such consultation.

23 “(b) The trust agreement governing the trust shall
24 provide—

1 “(1) for the payment of the fees, costs, ex-
2 penses, and indemnities of the special trustee from
3 the assets of the debtor’s estate;

4 “(2) that the special trustee provide—

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

7 “(B) information about the bridge com-
8 pany reasonably requested by a party in inter-
9 est to prepare a disclosure statement for a plan
10 providing for distribution of any securities of
11 the bridge company if such information is nec-
12 essary to prepare such disclosure statement;

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

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

19 “(B) any modification to the governing
20 documents of the bridge company; and

21 “(C) any material corporate action of the
22 bridge company, including—

23 “(i) recapitalization;

24 “(ii) a material borrowing;

1 “(iii) termination of an intercompany
2 debt or guarantee;

3 “(iv) a transfer of a substantial por-
4 tion of the assets of the bridge company;
5 or

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

8 “(4) that any sale of any equity securities of
9 the bridge company shall not be consummated until
10 the special trustee consults with the Federal Deposit
11 Insurance Corporation and the Board regarding
12 such sale and discloses the results of such consulta-
13 tion with the court;

14 “(5) that, subject to reserves for payments per-
15 mitted under paragraph (1) provided for in the trust
16 agreement, the proceeds of the sale of any equity se-
17 curities of the bridge company by the special trustee
18 be held in trust for the benefit of or transferred to
19 the estate;

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

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

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

3 “(A) if the court confirms a plan in the case,
4 in accordance with the plan on the effective date of
5 the plan; or

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

8 “(2) As soon as practicable after a final distribution
9 under paragraph (1), the office of the special trustee shall
10 terminate, except as may be necessary to wind up and con-
11 clude the business and financial affairs of the trust.

12 “(d) After a transfer to the special trustee under this
13 section, the special trustee shall be subject only to applica-
14 ble nonbankruptcy law, and the actions and conduct of
15 the special trustee shall no longer be subject to approval
16 by the court in the case under this subchapter.

17 **“§ 1187. Temporary and supplemental automatic stay;
18 assumed debt**

19 “(a)(1) A petition filed under section 1183 operates
20 as a stay, applicable to all entities, of the termination, ac-
21 celeration, or modification of any debt, contract, lease, or
22 agreement of the kind described in paragraph (2), or of
23 any right or obligation under any such debt, contract,
24 lease, or agreement, solely because of—

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

3 “(B) a provision in such debt, contract, lease,
4 or agreement, or in applicable nonbankruptcy law,
5 that is conditioned on—

6 “(i) the insolvency or financial condition of
7 the debtor at any time before the closing of the
8 case;

9 “(ii) the commencement of a case under
10 this title concerning the debtor;

11 “(iii) the appointment of or taking posses-
12 sion by a trustee in a case under this title con-
13 cerning the debtor or by a custodian before the
14 commencement of the case; or

15 “(iv) a credit rating agency rating, or ab-
16 sence or withdrawal of a credit rating agency
17 rating—

18 “(I) of the debtor at any time after
19 the commencement of the case;

20 “(II) of an affiliate during the period
21 from the commencement of the case until
22 48 hours after such order is entered;

23 “(III) of the bridge company while the
24 trustee or the special trustee is a direct or

1 indirect beneficial holder of more than 50
2 percent of the equity securities of—

3 “(aa) the bridge company; or

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

8 “(IV) of an affiliate while the trustee
9 or the special trustee is a direct or indirect
10 beneficial holder of more than 50 percent
11 of the equity securities of—

12 “(aa) the bridge company; or

13 “(bb) the affiliate, if all of the di-
14 rect or indirect interests in the affil-
15 iate that are property of the estate
16 are transferred under section 1185.

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

19 “(A) any debt (other than capital structure
20 debt), executory contract, or unexpired lease of the
21 debtor (other than a qualified financial contract);

22 “(B) any agreement under which the debtor
23 issued or is obligated for debt (other than capital
24 structure debt);

1 “(C) any debt, executory contract, or unexpired
2 lease of an affiliate (other than a qualified financial
3 contract); or

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

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

7 “(A) for the benefit of the debtor, upon the ear-
8 liest of—

9 “(i) 48 hours after the commencement of
10 the case;

11 “(ii) assumption of the debt, contract,
12 lease, or agreement by the bridge company
13 under an order authorizing a transfer under
14 section 1185; or

15 “(iii) a final order of the court denying the
16 request for a transfer under section 1185; and

17 “(B) for the benefit of an affiliate, upon the
18 earliest of—

19 “(i) the entry of an order authorizing a
20 transfer under section 1185 in which the direct
21 or indirect interests in the affiliate that are
22 property of the estate are not transferred under
23 section 1185;

24 “(ii) a final order by the court denying the
25 request for a transfer under section 1185; or

1 “(iii) 48 hours after the commencement of
2 the case if the court has not ordered a transfer
3 under section 1185.

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

6 “(b) A debt, executory contract (other than a quali-
7 fied financial contract), or unexpired lease of the debtor,
8 or an agreement under which the debtor has issued or is
9 obligated for any debt, may be assumed by a bridge com-
10 pany in a transfer under section 1185 notwithstanding
11 any provision in an agreement or in applicable nonbank-
12 ruptcy law that—

13 “(1) prohibits, restricts, or conditions the as-
14 signment of the debt, contract, lease, or agreement;
15 or

16 “(2) terminates or modifies, or permits a party
17 other than the debtor to terminate or modify, the
18 debt, contract, lease, or agreement on account of—

19 “(A) the assignment of the debt, contract,
20 lease, or agreement; or

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

23 “(c)(1) A debt, contract, lease, or agreement of the
24 kind described in subparagraph (A) or (B) of subsection
25 (a)(2) may not be terminated or modified, and any right

1 or obligation under such debt, contract, lease, or agree-
2 ment may not be terminated or modified, as to the bridge
3 company solely because of a provision in the debt, con-
4 tract, lease, or agreement or in applicable nonbankruptcy
5 law—

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

8 “(B) that prohibits, restricts, or conditions the
9 assignment of the debt, contract, lease, or agree-
10 ment; or

11 “(C) that terminates or modifies, or permits a
12 party other than the debtor to terminate or modify,
13 the debt, contract, lease or agreement on account
14 of—

15 “(i) the assignment of the debt, contract,
16 lease, or agreement; or

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

19 “(2) If there is a default by the debtor under a provi-
20 sion other than the kind described in paragraph (1) in
21 a debt, contract, lease or agreement of the kind described
22 in subparagraph (A) or (B) of subsection (a)(2), the
23 bridge company may assume such debt, contract, lease,
24 or agreement only if the bridge company—

25 “(A) shall cure the default;

1 “(B) compensates, or provides adequate assur-
2 ance in connection with a transfer under section
3 1185 that the bridge company will promptly com-
4 pensate, a party other than the debtor to the debt,
5 contract, lease, or agreement, for any actual pecu-
6 niary loss to the party resulting from the default;
7 and

8 “(C) provides adequate assurance in connection
9 with a transfer under section 1185 of future per-
10 formance under the debt, contract, lease, or agree-
11 ment, as determined by the court under section
12 1185(c)(4).

13 **“§ 1188. Treatment of qualified financial contracts**
14 **and affiliate contracts**

15 “(a) Notwithstanding sections 362(b)(6), 362(b)(7),
16 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and
17 561, a petition filed under section 1183 operates as a stay,
18 during the period specified in section 1187(a)(3)(A), ap-
19 plicable to all entities, of the exercise of a contractual
20 right—

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

24 “(2) to offset or net out any termination value,
25 payment amount, or other transfer obligation arising

1 under or in connection with a qualified financial con-
2 tract of the debtor or an affiliate; or

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

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

17 “(2) Any failure by a counterparty to any qualified
18 financial contract of the debtor or any affiliate to perform
19 any payment or delivery obligation under such qualified
20 financial contract, including during the pendency of the
21 stay provided under subsection (a), shall constitute a
22 breach of such qualified financial contract by the
23 counterparty.

1 “(c) A qualified financial contract between an entity
2 and the debtor may not be assigned to or assumed by the
3 bridge company in a transfer under section 1185 unless—

4 “(1) all qualified financial contracts between
5 the entity and the debtor are assigned to and as-
6 sumed by the bridge company in the transfer under
7 section 1185;

8 “(2) all claims of the entity against the debtor
9 under any qualified financial contract between the
10 entity and the debtor (other than any claim that,
11 under the terms of the qualified financial contract,
12 is subordinated to the claims of general unsecured
13 creditors) are assigned to and assumed by the bridge
14 company;

15 “(3) all claims of the debtor against the entity
16 under any qualified financial contract between the
17 entity and the debtor are assigned to and assumed
18 by the bridge company; and

19 “(4) all property securing or any other credit
20 enhancement furnished by the debtor for any quali-
21 fied financial contract described in paragraph (1) or
22 any claim described in paragraph (2) or (3) under
23 any qualified financial contract between the entity
24 and the debtor is assigned to and assumed by the
25 bridge company.

1 “(d) Notwithstanding any provision of a qualified fi-
2 nancial contract or of applicable nonbankruptcy law, a
3 qualified financial contract of the debtor that is assumed
4 or assigned in a transfer under section 1185 may not be
5 accelerated, terminated, or modified, after the entry of the
6 order approving a transfer under section 1185, and any
7 right or obligation under the qualified financial contract
8 may not be accelerated, terminated, or modified, after the
9 entry of the order approving a transfer under section 1185
10 solely because of a condition described in section
11 1187(c)(1), other than a condition of the kind specified
12 in section 1187(a)(1)(B)(iv)(III) or section 1187(b) that
13 occurs after property of the estate no longer includes a
14 direct beneficial interest or an indirect beneficial interest
15 through the special trustee, in more than 50 percent of
16 the equity securities of the bridge company.

17 “(e) Notwithstanding any provision of any agreement
18 or in applicable nonbankruptcy law, an agreement of an
19 affiliate (including an executory contract, an unexpired
20 lease, qualified financial contract, or an agreement under
21 which the affiliate issued or is obligated for debt) and any
22 right or obligation under such agreement may not be ter-
23 minated or modified, solely because of a condition de-
24 scribed in section 1187(c)(1), other than a condition of
25 the kind specified in section 1187(a)(1)(B)(iv)(III) or sec-

1 tion 1187(b) that occurs after the bridge company is no
2 longer a direct or indirect beneficial holder of more than
3 50 percent of the equity securities of the affiliate, at any
4 time after the commencement of the case if—

5 “(1) all direct or indirect interests in the affil-
6 iate that are property of the estate are transferred
7 under section 1185 to the bridge company within the
8 period specified in subsection (a);

9 “(2) the bridge company assumes—

10 “(A) any guarantee or other credit en-
11 hancement issued by the debtor relating to the
12 agreement of the affiliate; and

13 “(B) any right of setoff, netting arrange-
14 ment, or debt of the debtor that directly arises
15 out of or directly relates to the guarantee or
16 credit enhancement; and

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

20 **“§ 1189. Licenses, permits, and registrations**

21 “(a) Notwithstanding any otherwise applicable non-
22 bankruptcy law, if a request is made under section 1185
23 for a transfer of property of the estate, any Federal, State,
24 or local license, permit, or registration that the debtor or
25 an affiliate had immediately before the commencement of

1 the case and that is proposed to be transferred under sec-
2 tion 1185 may not be terminated or modified at any time
3 after the request solely on account of—

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

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

8 “(3) the appointment of or taking possession by
9 a trustee in a case under this title concerning the
10 debtor or by a custodian before the commencement
11 of the case; or

12 “(4) a transfer under section 1185.

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

19 **“§ 1190. Exemption from securities laws**

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

1 **“§ 1191. Inapplicability of certain avoiding powers**

2 “A transfer made or an obligation incurred by the
3 debtor to an affiliate prior to or after the commencement
4 of the case, including any obligation released by the debtor
5 or the estate to or for the benefit of an affiliate, in con-
6 templation of or in connection with a transfer under sec-
7 tion 1185 is not avoidable under section 544, 547,
8 548(a)(1)(B), or 549, or under any similar nonbankruptcy
9 law.

10 **“§ 1192. Consideration of financial stability**

11 “The court may consider the effect that any decision
12 in connection with this subchapter may have on financial
13 stability in the United States.”.

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

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

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

20 “(a) Notwithstanding section 295, the Chief Justice
21 of the United States shall designate not fewer than 3
22 judges of the courts of appeals in not fewer than 4 circuits
23 to serve on an appellate panel to be available to hear an
24 appeal under section 1183 of title 11 in a case under such
25 title concerning a covered financial corporation. Appellate

1 judges may request to be considered by the Chief Justice
2 of the United States for such designation.

3 “(b)(1) Notwithstanding section 295, the Chief Jus-
4 tice of the United States shall designate not fewer than
5 10 bankruptcy judges to be available to hear a case under
6 subchapter V of chapter 11 of title 11. Bankruptcy judges
7 may request to be considered by the Chief Justice of the
8 United States for such designation.

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

17 “(3) If the bankruptcy judge assigned to hear a case
18 under paragraph (2) is not assigned to the district in
19 which the case is pending, the bankruptcy judge shall be
20 temporarily assigned to the district.

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

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

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

6 “(B) if the 3 judges of such panel are not im-
7 mediately available to hear the case, 3 judges des-
8 ignated under subsection (a) from another circuit
9 and assigned by the Chief Justice of the United
10 States to hear the case.

11 “(3) If any of the judges of the appellate panel speci-
12 fied in paragraph (2) is not assigned to the circuit in
13 which the appeal is pending, the judges shall be tempo-
14 rarily assigned to the circuit.

15 “(4) A case under subchapter V of chapter 11 of title
16 11, and all proceedings in the case, shall take place in
17 the district in which the case is pending.

18 “(d) In this section, the term ‘covered financial cor-
19 poration’ has the meaning given that term in section
20 101(9A) of title 11.”.

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

24 “(f) This section does not grant jurisdiction to the
25 district court after a transfer pursuant to an order under

1 section 1185 of title 11 of any proceeding related to a spe-
2 cial trustee appointed, or to a bridge company formed, in
3 connection with a case under subchapter V of chapter 11
4 of title 11.”.

5 (c) TECHNICAL AND CONFORMING AMENDMENT.—
6 The table of sections for chapter 13 of title 28, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

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

Union Calendar No. 470

113TH CONGRESS
2D Session

H. R. 5421

[Report No. 113-630]

A BILL

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

DECEMBER 1, 2014

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed