

# Union Calendar No. 363

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2947

[Report No. 114-477]

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

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## IN THE HOUSE OF REPRESENTATIVES

JULY 7, 2015

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

MARCH 23, 2016

Additional sponsor: Mr. ROSS

MARCH 23, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 7, 2015]

# **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 2016”.*

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 in*  
18 *section 2(a) of the Bank Holding Company Act*  
19 *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 institutions,  
8           represents 85 percent or more of the consoli-  
9           dated annual gross revenues of the corpora-  
10          tion; or

11           “(ii) the consolidated assets of the cor-  
12          poration and all of its subsidiaries related  
13          to activities that are financial in nature (as  
14          defined in section 4(k) of the Bank Holding  
15          Company Act of 1956) and, if applicable,  
16          related to the ownership or control of one or  
17          more insured depository institutions, rep-  
18          resents 85 percent or more of the consoli-  
19          dated assets of the corporation.”.

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

23           “(l) Subchapter V of chapter 11 of this title applies  
24          only in a case under chapter 11 concerning a covered finan-  
25          cial corporation.”.

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

3           (1) *in subsection (b)*—

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

6                 (B) *in paragraph (3)(B)*, by striking the pe-  
7 *riod at the end and inserting “; or”*; and

8                 (C) *by adding at the end the following*:

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

10           (2) *in subsection (d)*—

11                 (A) *by striking “and” before “an uninsured*  
12 *State member bank”*;

13                 (B) *by striking “or” before “a corporation”*;  
14 *and*

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

18           (d) *CONVERSION TO CHAPTER 7*.—Section 1112 of title  
19 *11, United States Code*, is amended by adding at the end  
20 *the following*:

21                     “(g) *Notwithstanding section 109(b)*, the court may  
22 *convert a case under subchapter V to a case under chapter*  
23 *7 if*—

24                     “(1) *a transfer approved under section 1185 has*  
25 *been consummated*;

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

3           “(3) the court finds, after notice and a hearing,  
4           that conversion is in the best interest of the creditors  
5           and the estate.”.

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

10          (2) Section 1129(a) of title 11, United States Code,  
11          is amended by inserting after paragraph (16) the following:

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

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

20          (f) Section 322(b)(2) of title 11, United States Code,  
21          is amended by striking “The” and inserting “In cases under  
22          subchapter V, the United States trustee shall recommend to  
23          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 amended*  
5 *by adding at the end the following:*

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

9 “§ 1181. *Inapplicability of other sections*

10 *“Sections 303 and 321(c) do not apply in a case under*  
11 *this subchapter concerning a covered financial corporation.*  
12 *Section 365 does not apply to a transfer under section 1185,*  
13 *1187, or 1188.*

14 “§ 1182. *Definitions for this subchapter*

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

17 *“(1) The term ‘Board’ means the Board of Gov-*  
18 *ernors of the Federal Reserve System.*

19 *“(2) The term ‘bridge company’ means a newly*  
20 *formed corporation to which property of the estate*  
21 *may be transferred under section 1185(a) and the eq-*  
22 *uity securities of which may be transferred to a spe-*  
23 *cial trustee under section 1186(a).*

24 *“(3) The term ‘capital structure debt’ means all*  
25 *unsecured debt of the debtor for borrowed money for*  
26 *which the debtor is the primary obligor, other than a*

1        *qualified financial contract and other than debt se-*  
2        *cured by a lien on property of the estate that is to*  
3        *be transferred to a bridge company pursuant to an*  
4        *order of the court under section 1185(a).*

5            *“(4) The term ‘contractual right’ means a con-*  
6        *tractual right of a kind defined in section 555, 556,*  
7        *559, 560, or 561.*

8            *“(5) The term ‘qualified financial contract’*  
9        *means any contract of a kind defined in paragraph*  
10       *(25), (38A), (47), or (53B) of section 101, section*  
11       *741(7), or paragraph (4), (5), (11), or (13) of section*  
12       *761.*

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

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

17           *“(a) A case under this subchapter concerning a covered*  
18       *financial corporation may be commenced by the filing of*  
19       *a petition with the court by the debtor under section 301*  
20       *only if the debtor states to the best of its knowledge under*  
21       *penalty of perjury in the petition that it is a covered finan-*  
22       *cial corporation.*

23           *“(b) The commencement of a case under subsection (a)*  
24       *constitutes an order for relief under this subchapter.*

1       “(c) *The members of the board of directors (or body*  
2 *performing similar functions) of a covered financial com-*  
3 *pany shall have no liability to shareholders, creditors, or*  
4 *other parties in interest for a good faith filing of a petition*  
5 *to commence a case under this subchapter, or for any rea-*  
6 *sonable action taken in good faith in contemplation of or*  
7 *in connection with such a petition or a transfer under sec-*  
8 *tion 1185 or section 1186, whether prior to or after com-*  
9 *mencement of the case.*

10       “(d) *Counsel to the debtor shall provide, to the greatest*  
11 *extent practicable without disclosing the identity of the po-*  
12 *tential debtor, sufficient confidential notice to the chief*  
13 *judge of the court of appeals for the circuit embracing the*  
14 *district in which such counsel intends to file a petition to*  
15 *commence a case under this subchapter regarding the poten-*  
16 *tial commencement of such case. The chief judge of such*  
17 *court shall randomly assign to preside over such case a*  
18 *bankruptcy judge selected from among the bankruptcy*  
19 *judges designated by the Chief Justice of the United States*  
20 *under section 298 of title 28.*

21       **“§ 1184. Regulators**

22       *“The Board, the Securities Exchange Commission, the*  
23 *Office of the Comptroller of the Currency of the Department*  
24 *of the Treasury, the Commodity Futures Trading Commis-*  
25 *sion, and the Federal Deposit Insurance Corporation may*

1 raise and may appear and be heard on any issue in any  
2 case or proceeding under this subchapter.

3 **“§ 1185. Special transfer of property of the estate**

4       “(a) On request of the trustee, and after notice and  
5 a hearing that shall occur not less than 24 hours after the  
6 order for relief, the court may order a transfer under this  
7 section of property of the estate, and the assignment of exec-  
8 utory contracts, unexpired leases, and qualified financial  
9 contracts of the debtor, to a bridge company. Upon the entry  
10 of an order approving such transfer, any property trans-  
11 ferred, and any executory contracts, unexpired leases, and  
12 qualified financial contracts assigned under such order  
13 shall no longer be property of the estate. Except as provided  
14 under this section, the provisions of section 363 shall apply  
15 to a transfer and assignment under this section.

16       “(b) Unless the court orders otherwise, notice of a re-  
17 quest for an order under subsection (a) shall consist of elec-  
18 tronic or telephonic notice of not less than 24 hours to—

19               “(1) the debtor;

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

22               “(3) the holders of the 20 largest unsecured  
23 claims against the debtor;

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

4           “(5) the Board;

5           “(6) the Federal Deposit Insurance Corporation;

6           “(7) the Secretary of the Treasury and the Office  
7           of the Comptroller of the Currency of the Treasury;

8           “(8) the Commodity Futures Trading Commis-  
9           sion;

10          “(9) the Securities and Exchange Commission;

11          “(10) the United States trustee or bankruptcy  
12          administrator; and

13          “(11) each primary financial regulatory agency,  
14          as defined in section 2(12) of the Dodd-Frank Wall  
15          Street Reform and Consumer Protection Act, with re-  
16          spect to any affiliate the equity securities of which are  
17          proposed to be transferred under this section.

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

21                 “(1) the transfer under this section is necessary  
22                 to prevent serious adverse effects on financial stability  
23                 in the United States;

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

4           “(3) the transfer does not provide for the transfer  
5           to the bridge company of any property of the estate  
6           that is subject to a lien securing a debt, executory  
7           contract, unexpired lease or agreement (including a  
8           qualified financial contract) of the debtor unless—

9           “(A)(i) the bridge company assumes such  
10          debt, executory contract, unexpired lease or  
11          agreement (including a qualified financial con-  
12          tract), including any claims arising in respect  
13          thereof that would not be allowed secured claims  
14          under section 506(a)(1) and after giving effect to  
15          such transfer, such property remains subject to  
16          the lien securing such debt, executory contract,  
17          unexpired lease or agreement (including a quali-  
18          fied financial contract); and

19          “(ii) the court has determined that assump-  
20          tion of such debt, executory contract, unexpired  
21          lease or agreement (including a qualified finan-  
22          cial contract) by the bridge company is in the  
23          best interests of the estate; or

1           “(B) such property is being transferred to  
2           the bridge company in accordance with the pro-  
3           visions of section 363;

4           “(4) the transfer does not provide for the as-  
5           sumption by the bridge company of any debt, execu-  
6           tory contract, unexpired lease or agreement (includ-  
7           ing a qualified financial contract) of the debtor se-  
8           cured by a lien on property of the estate unless the  
9           transfer provides for such property to be transferred  
10          to the bridge company in accordance with paragraph  
11          (3)(A) of this subsection;

12          “(5) the transfer does not provide for the transfer  
13          of the equity of the debtor;

14          “(6) the trustee has demonstrated that the bridge  
15          company is not likely to fail to meet the obligations  
16          of any debt, executory contract, qualified financial  
17          contract, or unexpired lease assumed and assigned to  
18          the bridge company;

19          “(7) the transfer provides for the transfer to a  
20          special trustee all of the equity securities in the bridge  
21          company and appointment of a special trustee in ac-  
22          cordance with section 1186;

23          “(8) after giving effect to the transfer, adequate  
24          provision has been made for the fees, costs, and ex-  
25          penses of the estate and special trustee; and

1           “(9) the bridge company will have governing  
2 documents, and initial directors and senior officers,  
3 that are in the best interest of creditors and the estate.

4           “(d) Immediately before a transfer under this section,  
5 the bridge company that is the recipient of the transfer  
6 shall—

7           “(1) not have any property, executory contracts,  
8 unexpired leases, qualified financial contracts, or  
9 debts, other than any property acquired or executory  
10 contracts, unexpired leases, or debts assumed when  
11 acting as a transferee of a transfer under this section;  
12 and

13           “(2) have equity securities that are property of  
14 the estate, which may be sold or distributed in accord-  
15 ance with this title.

16 **“§ 1186. Special trustee**

17           “(a)(1) An order approving a transfer under section  
18 1185 shall require the trustee to transfer to a qualified and  
19 independent special trustee, who is appointed by the court,  
20 all of the equity securities in the bridge company that is  
21 the recipient of a transfer under section 1185 to hold in  
22 trust for the sole benefit of the estate, subject to satisfaction  
23 of the special trustee’s fees, costs, and expenses. The trust  
24 of which the special trustee is the trustee shall be a newly  
25 formed trust governed by a trust agreement approved by

1 *the court as in the best interests of the estate, and shall*  
2 *exist for the sole purpose of holding and administering, and*  
3 *shall be permitted to dispose of, the equity securities of the*  
4 *bridge company in accordance with the trust agreement.*

5       “(2) *In connection with the hearing to approve a*  
6 *transfer under section 1185, the trustee shall confirm to the*  
7 *court that the Board has been consulted regarding the iden-*  
8 *tity of the proposed special trustee and advise the court of*  
9 *the results of such consultation.*

10       “(b) *The trust agreement governing the trust shall pro-*  
11 *vide—*

12               “(1) *for the payment of the fees, costs, expenses,*  
13 *and indemnities of the special trustee from the assets*  
14 *of the debtor’s estate;*

15               “(2) *that the special trustee provide—*

16                       “(A) *quarterly reporting to the estate, which*  
17 *shall be filed with the court; and*

18                       “(B) *information about the bridge company*  
19 *reasonably requested by a party in interest to*  
20 *prepare a disclosure statement for a plan pro-*  
21 *viding for distribution of any securities of the*  
22 *bridge company if such information is necessary*  
23 *to prepare such disclosure statement;*

24               “(3) *that for as long as the equity securities of*  
25 *the bridge company are held by the trust, the special*

1 trustee shall file a notice with the court in connection  
2 with—

3 “(A) any change in a director or senior offi-  
4 cer of the bridge company;

5 “(B) any modification to the governing doc-  
6 uments of the bridge company; and

7 “(C) any material corporate action of the  
8 bridge company, including—

9 “(i) recapitalization;

10 “(ii) a material borrowing;

11 “(iii) termination of an intercompany  
12 debt or guarantee;

13 “(iv) a transfer of a substantial por-  
14 tion of the assets of the bridge company; or

15 “(v) the issuance or sale of any securi-  
16 ties of the bridge company;

17 “(4) that any sale of any equity securities of the  
18 bridge company shall not be consummated until the  
19 special trustee consults with the Federal Deposit In-  
20 surance Corporation and the Board regarding such  
21 sale and discloses the results of such consultation with  
22 the court;

23 “(5) that, subject to reserves for payments per-  
24 mitted under paragraph (1) provided for in the trust  
25 agreement, the proceeds of the sale of any equity secu-

1        *rities of the bridge company by the special trustee be*  
2        *held in trust for the benefit of or transferred to the*  
3        *estate;*

4            *“(6) the process and guidelines for the replace-*  
5        *ment of the special trustee; and*

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

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

11            *“(A) if the court confirms a plan in the case, in*  
12        *accordance with the plan on the effective date of the*  
13        *plan; or*

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

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

20            *“(d) After a transfer to the special trustee under this*  
21        *section, the special trustee shall be subject only to applicable*  
22        *nonbankruptcy law, and the actions and conduct of the spe-*  
23        *cial trustee shall no longer be subject to approval by the*  
24        *court in the case under this subchapter.*

1 **“§ 1187. Temporary and supplemental automatic stay;**  
2 **assumed debt**

3 “(a)(1) A petition filed under section 1183 operates  
4 as a stay, applicable to all entities, of the termination, ac-  
5 celeration, or modification of any debt, contract, lease, or  
6 agreement of the kind described in paragraph (2), or of any  
7 right or obligation under any such debt, contract, lease, or  
8 agreement, solely because of—

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

11 “(B) a provision in such debt, contract, lease, or  
12 agreement, or in applicable nonbankruptcy law, that  
13 is conditioned on—

14 “(i) the insolvency or financial condition of  
15 the debtor at any time before the closing of the  
16 case;

17 “(ii) the commencement of a case under this  
18 title concerning the debtor;

19 “(iii) the appointment of or taking posses-  
20 sion by a trustee in a case under this title con-  
21 cerning the debtor or by a custodian before the  
22 commencement of the case; or

23 “(iv) a credit rating agency rating, or ab-  
24 sence or withdrawal of a credit rating agency  
25 rating—

1           “(I) of the debtor at any time after the  
2           commencement of the case;

3           “(II) of an affiliate during the period  
4           from the commencement of the case until 48  
5           hours after such order is entered;

6           “(III) of the bridge company while the  
7           trustee or the special trustee is a direct or  
8           indirect beneficial holder of more than 50  
9           percent of the equity securities of—

10                   “(aa) the bridge company; or

11                   “(bb) the affiliate, if all of the di-  
12                   rect or indirect interests in the affiliate  
13                   that are property of the estate are  
14                   transferred under section 1185; or

15           “(IV) of an affiliate while the trustee  
16           or the special trustee is a direct or indirect  
17           beneficial holder of more than 50 percent of  
18           the equity securities of—

19                   “(aa) the bridge company; or

20                   “(bb) the affiliate, if all of the di-  
21                   rect or indirect interests in the affiliate  
22                   that are property of the estate are  
23                   transferred under section 1185.

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

1           “(A) any debt (other than capital structure  
2           debt), executory contract, or unexpired lease of the  
3           debtor (other than a qualified financial contract);

4           “(B) any agreement under which the debtor  
5           issued or is obligated for debt (other than capital  
6           structure debt);

7           “(C) any debt, executory contract, or unexpired  
8           lease of an affiliate (other than a qualified financial  
9           contract); or

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

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

13                 “(A) for the benefit of the debtor, upon the ear-  
14                 liest of—

15                         “(i) 48 hours after the commencement of the  
16                         case;

17                         “(ii) assumption of the debt, contract, lease,  
18                         or agreement by the bridge company under an  
19                         order authorizing a transfer under section 1185;

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

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

23                 “(B) for the benefit of an affiliate, upon the ear-  
24                 liest of—

1           “(i) the entry of an order authorizing a  
2           transfer under section 1185 in which the direct  
3           or indirect interests in the affiliate that are  
4           property of the estate are not transferred under  
5           section 1185;

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

8           “(iii) 48 hours after the commencement of  
9           the case if the court has not ordered a transfer  
10          under section 1185; or

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

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

14          “(b) A debt, executory contract (other than a qualified  
15          financial contract), or unexpired lease of the debtor, or an  
16          agreement under which the debtor has issued or is obligated  
17          for any debt, may be assumed by a bridge company in a  
18          transfer under section 1185 notwithstanding any provision  
19          in an agreement or in applicable nonbankruptcy law  
20          that—

21                 “(1) prohibits, restricts, or conditions the assign-  
22                 ment of the debt, contract, lease, or agreement; or

23                 “(2) accelerates, terminates, or modifies, or per-  
24                 mits a party other than the debtor to terminate or

1       *modify, the debt, contract, lease, or agreement on ac-*  
2       *count of—*

3               “(A) *the assignment of the debt, contract,*  
4               *lease, or agreement; or*

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

7       “(c)(1) *A debt, contract, lease, or agreement of the kind*  
8       *described in subparagraph (A) or (B) of subsection (a)(2)*  
9       *may not be accelerated, terminated, or modified, and any*  
10       *right or obligation under such debt, contract, lease, or agree-*  
11       *ment may not be accelerated, terminated, or modified, as*  
12       *to the bridge company solely because of a provision in the*  
13       *debt, contract, lease, or agreement or in applicable non-*  
14       *bankruptcy law—*

15               “(A) *of the kind described in subsection (a)(1)(B)*  
16               *as applied to the debtor;*

17               “(B) *that prohibits, restricts, or conditions the*  
18               *assignment of the debt, contract, lease, or agreement;*  
19               *or*

20               “(C) *that accelerates, terminates, or modifies, or*  
21               *permits a party other than the debtor to terminate or*  
22               *modify, the debt, contract, lease or agreement on ac-*  
23               *count of—*

24               “(i) *the assignment of the debt, contract,*  
25               *lease, or agreement; or*

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

3                   “(2) If there is a default by the debtor under a provi-  
4                   sion other than the kind described in paragraph (1) in a  
5                   debt, contract, lease or agreement of the kind described in  
6                   subparagraph (A) or (B) of subsection (a)(2), the bridge  
7                   company may assume such debt, contract, lease, or agree-  
8                   ment only if the bridge company—

9                   “(A) shall cure the default;

10                   “(B) compensates, or provides adequate assur-  
11                   ance in connection with a transfer under section 1185  
12                   that the bridge company will promptly compensate, a  
13                   party other than the debtor to the debt, contract, lease,  
14                   or agreement, for any actual pecuniary loss to the  
15                   party resulting from the default; and

16                   “(C) provides adequate assurance in connection  
17                   with a transfer under section 1185 of future perform-  
18                   ance under the debt, contract, lease, or agreement, as  
19                   determined by the court under section 1185(c)(4).

20                   **“§1188. Treatment of qualified financial contracts**  
21                   **and affiliate contracts**

22                   “(a) Notwithstanding sections 362(b)(6), 362(b)(7),  
23                   362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and 561,  
24                   a petition filed under section 1183 operates as a stay, dur-

1 *ing the period specified in section 1187(a)(3)(A), applicable*  
2 *to all entities, of the exercise of a contractual right—*

3 *“(1) to cause the modification, liquidation, ter-*  
4 *mination, or acceleration of a qualified financial con-*  
5 *tract of the debtor or an affiliate;*

6 *“(2) to offset or net out any termination value,*  
7 *payment amount, or other transfer obligation arising*  
8 *under or in connection with a qualified financial con-*  
9 *tract of the debtor or an affiliate; or*

10 *“(3) under any security agreement or arrange-*  
11 *ment or other credit enhancement forming a part of*  
12 *or related to a qualified financial contract of the debt-*  
13 *or or an affiliate.*

14 *“(b)(1) During the period specified in section*  
15 *1187(a)(3)(A), the trustee or the affiliate shall perform all*  
16 *payment and delivery obligations under such qualified fi-*  
17 *ancial contract of the debtor or the affiliate, as the case*  
18 *may be, that become due after the commencement of the*  
19 *case. The stay provided under subsection (a) terminates as*  
20 *to a qualified financial contract of the debtor or an affiliate*  
21 *immediately upon the failure of the trustee or the affiliate,*  
22 *as the case may be, to perform any such obligation during*  
23 *such period.*

24 *“(2) Any failure by a counterparty to any qualified*  
25 *financial contract of the debtor or any affiliate to perform*

1 *any payment or delivery obligation under such qualified*  
2 *financial contract, including during the pendency of the*  
3 *stay provided under subsection (a), shall constitute a breach*  
4 *of such qualified financial contract by the counterparty.*

5       “(c) *Subject to the court’s approval, a qualified finan-*  
6 *cial contract between an entity and the debtor may be as-*  
7 *signed to or assumed by the bridge company in a transfer*  
8 *under, and in accordance with, section 1185 if and only*  
9 *if—*

10               “(1) *all qualified financial contracts between the*  
11 *entity and the debtor are assigned to and assumed by*  
12 *the bridge company in the transfer under section*  
13 *1185;*

14               “(2) *all claims of the entity against the debtor*  
15 *in respect of any qualified financial contract between*  
16 *the entity and the debtor (other than any claim that,*  
17 *under the terms of the qualified financial contract, is*  
18 *subordinated to the claims of general unsecured credi-*  
19 *tors) are assigned to and assumed by the bridge com-*  
20 *pany;*

21               “(3) *all claims of the debtor against the entity*  
22 *under any qualified financial contract between the*  
23 *entity and the debtor are assigned to and assumed by*  
24 *the bridge company; and*

1           “(4) all property securing or any other credit en-  
2           hancement furnished by the debtor for any qualified  
3           financial contract described in paragraph (1) or any  
4           claim described in paragraph (2) or (3) under any  
5           qualified financial contract between the entity and  
6           the debtor is assigned to and assumed by the bridge  
7           company.

8           “(d) Notwithstanding any provision of a qualified fi-  
9           nancial contract or of applicable nonbankruptcy law, a  
10          qualified financial contract of the debtor that is assumed  
11          or assigned in a transfer under section 1185 may not be  
12          accelerated, terminated, or modified, after the entry of the  
13          order approving a transfer under section 1185, and any  
14          right or obligation under the qualified financial contract  
15          may not be accelerated, terminated, or modified, after the  
16          entry of the order approving a transfer under section 1185  
17          solely because of a condition described in section 1187(c)(1),  
18          other than a condition of the kind specified in section  
19          1187(b) that occurs after property of the estate no longer  
20          includes a direct beneficial interest or an indirect beneficial  
21          interest through the special trustee, in more than 50 percent  
22          of the equity securities of the bridge company.

23          “(e) Notwithstanding any provision of any agreement  
24          or in applicable nonbankruptcy law, an agreement of an  
25          affiliate (including an executory contract, an unexpired

1 lease, qualified financial contract, or an agreement under  
2 which the affiliate issued or is obligated for debt) and any  
3 right or obligation under such agreement may not be accel-  
4 erated, terminated, or modified, solely because of a condi-  
5 tion described in section 1187(c)(1), other than a condition  
6 of the kind specified in section 1187(b) that occurs after  
7 the bridge company is no longer a direct or indirect bene-  
8 ficial holder of more than 50 percent of the equity securities  
9 of the affiliate, at any time after the commencement of the  
10 case if—

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

15           “(2) the bridge company assumes—

16                   “(A) any guarantee or other credit enhance-  
17                   ment issued by the debtor relating to the agree-  
18                   ment of the affiliate; and

19                   “(B) any obligations in respect of rights of  
20                   setoff, netting arrangement, or debt of the debtor  
21                   that directly arises out of or directly relates to  
22                   the guarantee or credit enhancement; and

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

1 **“§ 1189. Licenses, permits, and registrations**

2       “(a) Notwithstanding any otherwise applicable non-  
3 bankruptcy law, if a request is made under section 1185  
4 for a transfer of property of the estate, any Federal, State,  
5 or local license, permit, or registration that the debtor or  
6 an affiliate had immediately before the commencement of  
7 the case and that is proposed to be transferred under section  
8 1185 may not be accelerated, terminated, or modified at  
9 any time after the request solely on account of—

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

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

14               “(3) the appointment of or taking possession by  
15 a trustee in a case under this title concerning the  
16 debtor or by a custodian before the commencement of  
17 the case; or

18               “(4) a transfer under section 1185.

19       “(b) Notwithstanding any otherwise applicable non-  
20 bankruptcy law, any Federal, State, or local license, permit,  
21 or registration that the debtor had immediately before the  
22 commencement of the case that is included in a transfer  
23 under section 1185 shall be valid and all rights and obliga-  
24 tions thereunder shall vest in the bridge company.

1 **“§ 1190. Exemption from securities laws**

2       *“For purposes of section 1145, a security of the bridge*  
3 *company shall be deemed to be a security of a successor*  
4 *to the debtor under a plan if the court approves the disclo-*  
5 *sure statement for the plan as providing adequate informa-*  
6 *tion (as defined in section 1125(a)) about the bridge com-*  
7 *pany and the security.*

8 **“§ 1191. Inapplicability of certain avoiding powers**

9       *“A transfer made or an obligation incurred by the*  
10 *debtor to an affiliate prior to or after the commencement*  
11 *of the case, including any obligation released by the debtor*  
12 *or the estate to or for the benefit of an affiliate, in con-*  
13 *templation of or in connection with a transfer under section*  
14 *1185 is not avoidable under section 544, 547, 548(a)(1)(B),*  
15 *or 549, or under any similar nonbankruptcy law.*

16 **“§ 1192. Consideration of financial stability**

17       *“The court may consider the effect that any decision*  
18 *in connection with this subchapter may have on financial*  
19 *stability in the United States.”.*

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

21       *(a) AMENDMENT TO CHAPTER 13.—Chapter 13 of title*  
22 *28, United States Code, is amended by adding at the end*  
23 *the following:*

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

3 “(a)(1) Notwithstanding section 295, the Chief Justice  
4 of the United States shall designate not fewer than 10 bank-  
5 ruptcy judges to be available to hear a case under sub-  
6 chapter V of chapter 11 of title 11. Bankruptcy judges may  
7 request to be considered by the Chief Justice of the United  
8 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 randomly assigned to hear such case  
13 by the chief judge of the court of appeals for the circuit  
14 embracing the district in which the case is pending. To the  
15 greatest extent practicable, the approvals required under  
16 section 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 which  
19 the case is pending, the bankruptcy judge shall be tempo-  
20 rarily assigned to the district.

21 “(b) A case under subchapter V of chapter 11 of title  
22 11, and all proceedings in the case, shall take place in the  
23 district in which the case is pending.

24 “(c) In this section, the term ‘covered financial cor-  
25 poration’ has the meaning given that term in section  
26 101(9A) of title 11.”.

1           (b) *AMENDMENT TO SECTION 1334 OF TITLE 28.*—Sec-  
2 *tion 1334 of title 28, United States Code, is amended by*  
3 *adding at the end the following:*

4           “(f) *This section does not grant jurisdiction to the dis-*  
5 *trict court after a transfer pursuant to an order under sec-*  
6 *tion 1185 of title 11 of any proceeding related to a special*  
7 *trustee appointed, or to a bridge company formed, in con-*  
8 *nection with a case under subchapter V of chapter 11 of*  
9 *title 11.”.*

10          (c) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*  
11 *table of sections for chapter 13 of title 28, United States*  
12 *Code, is amended by adding at the end the following:*

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

Union Calendar No. 363

114<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 2947**

[Report No. 114-477]

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## **A BILL**

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

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MARCH 23, 2016

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed