

SENATE, No. 851

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Revises effects of delinquency and insolvency proceedings against insurer-members of federal home loan banks.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



S851 POU, OROHO

2

1 AN ACT concerning insurer insolvency and amending P.L.1975,
2 c.113 and P.L.1992, c.65.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1975, c.113 (C.17:30C-1) is amended to
8 read as follows:

9 1. a. "Impairment or insolvency" means the capital of a stock
10 insurer or the surplus of a mutual insurer, shall be deemed to be
11 impaired and the insurer shall be deemed to be insolvent, when such
12 insurer is not possessed of assets at least equal to all liabilities and
13 required reserves together with its total issued and outstanding
14 capital stock of a stock insurer, or the minimum surplus if a mutual
15 insurer required by this title to be maintained for the kind or kinds
16 of insurance it is then authorized to transact.

17 b. "Insurer" shall include a person subject to the insurance
18 supervisory authority of, or to liquidation, rehabilitation,
19 reorganization or conservation by, the commissioner or the
20 equivalent insurance supervisory official of another state; also all
21 persons purporting to be engaged as insurer in this State, and
22 persons in process of organization to become insurers, pursuant to
23 the provisions of Title 17 of the Revised Statutes.

24 c. "Delinquency proceeding" means any proceeding
25 commenced against an insurer pursuant to this act for the purpose of
26 liquidating, rehabilitating, reorganizing or conserving such insurer.

27 d. "Domiciliary state" means the state in which an insurer has
28 its domicile, or in the case of an alien insurer the State in which
29 such insurer, having become authorized to do business in such state,
30 has at the commencement of delinquency proceedings, the largest
31 amount of its assets held in trust and assets held on deposit for the
32 benefit of its policyholders or policyholders and creditors in the
33 United States, and any such insurer is deemed to be domiciled in
34 such state.

35 e. "Ancillary state" means any state other than a domiciliary
36 state.

37 f. "Reciprocal state" means any state other than this State in
38 which in substance and effect the provisions of the Uniform
39 Insurers Liquidation Act, as defined in section 23 of this act are in
40 force, including the provisions requiring that the commissioner or
41 equivalent insurance supervisory official be the receiver of a
42 delinquent insurer.

43 g. "General assets" means all property, real, personal or
44 otherwise, not specifically mortgaged, pledged, deposited or
45 otherwise encumbered for the security or benefit of specified

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S851 POU, OROHO

1 persons or a limited class or classes of persons, and as to such
2 specifically encumbered property the term includes all such
3 property or its proceeds in excess of the amount necessary to
4 discharge the sum or sums secured thereby. Assets held in trust and
5 assets held on deposit for the security or benefit of all policyholders
6 or all policyholders and creditors in the United States shall be
7 deemed general assets.

8 h. "Preferred claim" means any claim with respect to which the
9 law of the State or of the United States accords priority of payment
10 from the general assets of the insurer.

11 i. "Special deposit claim" means any claim secured by a
12 deposit made pursuant to statute for the security or benefit of a
13 limited class or classes of persons, but not including any general
14 assets.

15 j. "Secured claim" means any claim secured by mortgage,
16 trust, deed, pledge, deposit as security, escrow or otherwise, but not
17 including special deposit claim or claims against general assets.
18 The term also includes claims which more than 4 months prior to
19 the commencement of delinquency proceedings in the state of the
20 insurer's domicile have become liens upon specific assets by reason
21 of judicial process.

22 k. "Receiver" means receiver, liquidator, rehabilitator or
23 conservator as the context may require.

24 l. "Federal home loan bank" means a bank as defined in 12
25 U.S.C. s.1422(1)(A).

26 m. "Insurer-member" means an insurer that is a member of a
27 Federal Home Loan Bank.

28 n. "Advance" shall have the same meaning as that term is
29 defined at 12 C.F.R. s.1266.1.

30 (cf: P.L.1975, c.113, s.1)

31

32 2. Section 4 of P.L.1975, c.113 (C.17:30C-4) is amended to
33 read as follows:

34 4. a. The commissioner shall commence any such proceeding
35 by an application to the court or to any judge thereof, for an order
36 directing the insurer to show cause why the commissioner should
37 not have the relief prayed for.

38 b. The application shall be by verified petition, setting forth the
39 ground or grounds for the proceeding and the relief demanded.

40 c. If the court is satisfied from reading the commissioner's
41 petition that the facts therein alleged, if established, would
42 constitute grounds for a delinquency proceeding under this act, it
43 shall issue an order to show cause as referred to in a. above.

44 d. On the return of the order to show cause, the court shall
45 either deny the application or grant the application together with
46 such other relief as the nature of the case and the interests of the
47 policyholders, creditors, stockholders, members, subscribers or the
48 public may require.

S851 POU, OROHO

1 e. Notwithstanding any provision of law to the contrary, the
2 commencement of a delinquency proceeding with respect to an
3 insurer-member shall not operate as a stay, injunction, or
4 prohibition of exercise by a federal home loan bank of its rights
5 regarding collateral pledged by that insurer-member.

6 (cf: P.L.1975, c.113, s.4)

7
8 3. Section 5 of P.L.1975, c.113 (C.17:30C-5) is amended to
9 read as follows:

10 5. a. Upon application by the commissioner for such an order
11 to show cause, or at any time thereafter, the court may, without
12 notice, issue an injunction restraining the insurer, its officers,
13 directors, stockholders, policyholders, agents, and all other persons
14 from the transaction of its business or the waste or disposition of
15 its property until the further order of the court.

16 b. The court may, at any time during a proceeding under this
17 act, issue such other injunctions or orders as may be deemed
18 necessary to prevent interference with the commissioner or the
19 proceeding, or waste of the assets of the insurer, or the
20 commencement or prosecution of any actions, or the obtaining of
21 preferences, judgments, attachments or other liens, or the making of
22 any levy against the insurer or against its assets or any part thereof.

23 c. Notwithstanding any provision of law to the contrary, the
24 commencement of a delinquency proceeding with respect to an
25 insurer-member shall not operate as a stay, injunction, or
26 prohibition of exercise by a federal home loan bank of its rights
27 regarding collateral pledged by that insurer-member.

28 (cf: P.L.1975, c.113, s.5)

29
30 4. Section 25 of P.L.1975, c.113 (C.17:30C-25) is amended to
31 read as follows:

32 25. a. Any transfer of, or lien upon, the property of an insurer
33 which is made or created within 4 months prior to the granting of
34 an order to show cause under this act with the intent of giving to
35 any creditor or of enabling him to obtain a greater percentage of his
36 debt than any other creditor of the same class, and which is
37 accepted by such creditor having reasonable cause to believe that
38 such a preference will occur, shall be voidable.

39 b. Every director, officer, employee, stockholder, policyholder,
40 and any other person acting on behalf of such insurer who shall be
41 concerned in any such act or deed and every person receiving
42 thereby any property of such insurer or the benefit thereof, shall be
43 personally liable therefor and shall be bound to account to the
44 commissioner.

45 c. The commissioner, as receiver in any proceeding under this
46 act, may avoid any transfer of, or lien upon the property of an
47 insurer which any creditor, stockholder or policyholder of such
48 insurer might have avoided, and may recover the property so

1 transferred, or its value from the person to whom it was transferred,
2 unless such person was a bona fide holder for value prior to the date
3 of the granting of an order to show cause under this act. Such
4 property or its value may be recovered from anyone who has
5 received it, except a bona fide holder for value as above specified.

6 d. (1) A receiver shall not void a transfer of money or other
7 property arising under or in conjunction with a federal home loan
8 bank security agreement provided that the transfer:

9 (a) is made before the commencement of a formal proceeding
10 under P.L.1975, c.113 (C.17:30C-1 et seq.) in the ordinary course
11 of business and in compliance with the security agreement; and

12 (b) the security agreement is valid pursuant to State law and the
13 “Federal Home Loan Bank Act” (12 U.S.C. s.1421 et seq.).

14 (2) A receiver shall not void a redemption or repurchase of any
15 stock or equity securities made by the federal home loan bank if the
16 redemption or repurchase: (a) is made within four months of a
17 formal commencement of the delinquency proceeding; or (b) has
18 received prior approval of the receiver.

19 (3) A receiver may void any transfer if the transfer is made with
20 actual intent to hinder, delay, or defraud the insurer-member, a
21 receiver appointed for the insurer-member, or existing or future
22 creditors.

23 e. Following the appointment of a receiver for an insurer-
24 member and upon request of the receiver, the federal home loan
25 bank shall, within 10 days of the request, provide a process and
26 establish a timeline for:

27 (1) the release of the collateral that exceeds the lending value
28 required to support secured obligations remaining after a repayment
29 of advances, as determined in accordance with the federal home
30 loan bank security agreement;

31 (2) the release of any collateral remaining in the federal home
32 loan bank’s possession following repayment of all outstanding
33 secured obligations in full;

34 (3) the payment of fees and the operation of deposits and other
35 accounts with the federal home loan bank; and

36 (4) the possible redemption or repurchase of federal home loan
37 bank stock or excess stock of any class that an insurer-member is
38 required to own.

39 f. Upon the request of the receiver for an insurer-member, the
40 federal home loan bank shall provide any available options for the
41 insurer-member to renew or restructure an advance to defer
42 associated prepayment fees, to the extent that market conditions, the
43 terms of the advance outstanding to the insurer-member, the
44 applicable policies of the federal home loan bank, and compliance
45 with the “Federal Home Loan Bank Act” (12 U.S.C. s.1421 et seq.)
46 and corresponding regulations permit.

1 g. Nothing in this section shall affect the receiver's rights
2 pursuant to 12 C.F.R. s.1266.4 regarding advances to an insurer-
3 member in delinquency proceedings.

4 (cf: P.L.1975, c.113, s.25)

5
6 5. Section 3 of P.L.1992, c.65 (C.17B:32-33) is amended to
7 read as follows:

8 3. For the purposes of this act:

9 "Advance" shall have the same meaning as that term is defined
10 at 12 C.F.R. s.1266.1.

11 "Ancillary state" means any state other than a domiciliary state.

12 "Commissioner" means the Commissioner of Insurance of this
13 State.

14 "Creditor" is a person having any claim against the insurer,
15 whether matured or unmatured, liquidated or unliquidated, secured
16 or unsecured, absolute, fixed or contingent.

17 "Delinquency proceeding" means any proceeding instituted
18 against an insurer for the purpose of liquidating, rehabilitating,
19 reorganizing or conserving that insurer, and any summary
20 proceeding under section 9 of this act. "Formal delinquency
21 proceeding" means any liquidation or rehabilitation proceeding.

22 "Department" means the Department of Insurance.

23 "Doing business" includes any of the following acts, whether
24 effected by mail or otherwise:

25 (1) The issuance or delivery of contracts of life or health
26 insurance or annuity to persons residing in this State;

27 (2) The solicitation of applications for those contracts, or other
28 negotiations preliminary to the execution of those contracts;

29 (3) The collection of premiums, membership fees, assessments
30 or other consideration for those contracts;

31 (4) The transaction of matters subsequent to execution of those
32 contracts and arising out of them; or

33 (5) Operating under a license or certificate of authority, as an
34 insurer, issued by the department.

35 "Domiciliary state" means the state in which an insurer is
36 incorporated or organized; or, in the case of an alien insurer, its
37 state of entry.

38 "Fair consideration" is given for property or obligation:

39 (1) When in exchange for that property or obligation, as a fair
40 equivalent therefor, and in good faith, property is conveyed or
41 services are rendered or an obligation is incurred or an antecedent
42 debt is satisfied; or

43 (2) When that property or obligation is received in good faith to
44 secure a present advance or antecedent debt in an amount not
45 disproportionately small as compared to the value of the property or
46 obligation obtained.

47 "Federal home loan bank" means a bank as defined in 12 U.S.C.
48 s.1422(1)(A).

1 "Foreign country" means any other jurisdiction not in any state.

2 "General assets" means all property, real, personal or otherwise,
3 not specifically mortgaged, pledged, deposited or otherwise
4 encumbered for the security or benefit of specified persons or
5 classes of persons. As to specifically encumbered property,
6 "general assets" includes all such property or its proceeds in excess
7 of the amount necessary to discharge the sum or sums secured
8 thereby. Assets held in trust and on deposit for the security or
9 benefit of all policyholders or all policyholders and creditors, in
10 more than a single state, shall be treated as general assets.

11 "Guaranty association" means the New Jersey Life and Health
12 Insurance Guaranty Association created in subsection a. of section 5
13 of P.L.1991, c.208 (C.17B:32A-5) and any other similar entity now
14 or hereafter created by any other law of this State for the payment
15 of claims of insolvent insurers. "Foreign guaranty association"
16 means any similar entities now in existence in, or hereafter created
17 by, any law of any other state.

18 "Insolvency" or "insolvent" means:

19 (1) That an insurer: (a) is unable to pay its obligations when
20 they are due, or (b) its admitted assets do not exceed its liabilities
21 plus the greater of:

22 (i) Any capital and surplus required by law for its organization;
23 or

24 (ii) The total par or stated value of its authorized and issued
25 capital stock.

26 (2) As to any insurer licensed to do business in this State, as of
27 the effective date of this act, which does not meet the standard
28 established under paragraph (1) of this definition, the term
29 "insolvency" or "insolvent" shall mean, for a period not to exceed
30 three years from the effective date of this act, that it is unable to pay
31 its obligations when they are due or that its admitted assets do not
32 exceed its liabilities plus any required capital contribution ordered
33 by the commissioner under provisions of the insurance law.

34 (3) For purposes of the definition of "insolvency" or "insolvent,"
35 "liabilities" shall include, but not be limited to, reserves required by
36 law or by regulations of the department or specific requirements
37 imposed by the commissioner upon an insurer at the time of
38 admission or subsequent thereto.

39 "Insurer" includes every person engaged as indemnitor or
40 contractor in the business of life insurance, health insurance or of
41 annuities and every such person subject to the supervisory authority
42 of, or to liquidation, rehabilitation, reorganization or conservation
43 by, the commissioner or the equivalent insurance regulator of
44 another state; every person purporting to be engaged as indemnitor
45 or contractor in the business of life insurance, health insurance or of
46 annuities in this State; every person in the process of organization
47 to become engaged as indemnitor or contractor in the business of
48 life insurance, health insurance or of annuities; and every fraternal

S851 POU, OROHO

8

1 benefit society established pursuant to P.L.1959, c.167 (C.17:44A-1
2 et seq.); every mutual benefit association established pursuant to
3 R.S.17:45-1 et seq.; every hospital service corporation established
4 pursuant to P.L.1938, c.366 (C.17:48-1 et seq.); every health
5 service corporation established pursuant to P.L.1985, c.236
6 (C.17:48E-1 et seq.); every medical service corporation established
7 pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.); every dental
8 service corporation established pursuant to P.L.1968, c.305
9 (C.17:48C-1 et seq.); every dental plan organization established
10 pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.); and every health
11 maintenance organization established pursuant to P.L.1973, c.337
12 (C.26:2J-1 et seq.).

13 "Insurer-member" means an insurer that is a member of a federal
14 home loan bank.

15 "Preferred claim" means any claim which is accorded priority of
16 payment from the general assets of the insurer pursuant to the
17 provisions of this act.

18 "Receiver" means receiver, liquidator, rehabilitator or
19 conservator as the context requires.

20 "Reciprocal state" means any state, other than this State, in
21 which in substance and effect, subsection a. of section 17 and
22 sections 51, 52 and 54 through 56 of this act are in force, and in
23 which provisions are in force requiring the commissioner or
24 equivalent official to be the receiver of a delinquent insurer, and in
25 which some provision exists for the avoidance of fraudulent
26 conveyances and preferential transfers.

27 "Secured claim" means any claim secured by mortgage, trust
28 deed, pledge, deposit as security, escrow, or otherwise; but not
29 including special deposit claims or claims against general assets.
30 The term also includes claims which have become liens upon
31 specific assets by reason of judicial process.

32 "Special deposit claim" means any claim secured by a deposit
33 made pursuant to law for the security or benefit of a limited class or
34 classes of persons, but not including any claim secured by general
35 assets.

36 "State" means any state, district, or territory of the United States
37 and the Panama Canal Zone.

38 "Transfer" shall include the sale and every other and different
39 mode, direct or indirect, of disposing of or of parting with, property
40 or with an interest therein, or with the possession thereof, or of
41 fixing a lien upon property or upon an interest therein, absolutely or
42 conditionally, voluntarily, by or without judicial proceedings. The
43 retention of a security title to property delivered to a debtor shall be
44 deemed a transfer suffered by the debtor.

45 (cf: P.L.1992, c.65, s.3)

46

47 6. Section 5 of P.L.1992, c.65 (C.17B:32-35) is amended to
48 read as follows:

1 5. a. Any receiver appointed in a proceeding under this act
2 may at any time apply for, and the Superior Court may grant, such
3 restraining orders, preliminary and permanent injunctions, and other
4 orders as may be deemed necessary and proper to prevent:

5 (1) The transaction of further business;

6 (2) The transfer of property;

7 (3) Interference with the receiver or with a proceeding under
8 this act;

9 (4) Waste of the insurer's assets;

10 (5) Dissipation and transfer of bank accounts;

11 (6) The institution or further prosecution of any actions or
12 proceedings;

13 (7) The obtaining of preferences, judgments, attachments,
14 garnishments or liens against the insurer, its assets or its
15 policyholders;

16 (8) The levying of execution against the insurer, its assets or its
17 policyholders;

18 (9) The making of any sale or deed for nonpayment of taxes or
19 assessments that would lessen the value of the assets of the insurer;

20 (10) The withholding from the receiver of books, accounts,
21 documents or other records relating to the business of the insurer; or

22 (11) Any other threatened or contemplated action that might
23 lessen the value of the insurer's assets or prejudice the rights of
24 policyholders, creditors or shareholders, or the administration of
25 any proceeding under this act.

26 b. The receiver may apply to any court outside of this State for
27 the relief described in subsection a. of this section.

28 c. Notwithstanding any provision of law to the contrary, the
29 commencement of a delinquency proceeding with respect to an
30 insurer-member shall not operate as a stay, injunction, or
31 prohibition of exercise by a federal home loan bank of its rights
32 regarding collateral pledged by that insurer-member.

33 (cf: P.L.1992, c.65, s.5)

34
35 7. Section 25 of P.L.1992, c.65 (C.17B:32-55) is amended to
36 read as follows:

37 25. a. Every transfer made or suffered and every obligation
38 incurred by an insurer within one year prior to the filing of a
39 successful petition for rehabilitation or liquidation under this act
40 shall be fraudulent as to then existing and future creditors if made
41 or incurred without fair consideration, or with actual intent to
42 hinder, delay or defraud either existing or future creditors. A
43 transfer made or an obligation incurred by an insurer ordered to be
44 rehabilitated or liquidated under this act, which is fraudulent under
45 this section, may be avoided by the receiver, except as to a person
46 who in good faith is a purchaser, lienholder or obligee for a present
47 fair equivalent value, and except that any purchaser, lienholder or
48 obligee, who in good faith has given a consideration which is less

1 than fair for that transfer, lien or obligation, may retain the
2 property, lien or obligation as security for repayment. The court
3 may, on due notice, order any such transfer or obligation to be
4 preserved for the benefit of the estate, and in that event, the receiver
5 shall succeed to and may enforce the rights of the purchaser,
6 lienholder or obligee.

7 b. (1) A transfer of property other than real property shall be
8 deemed to be made or suffered when it becomes so far perfected
9 that no subsequent lien obtainable by legal or equitable proceedings
10 on a simple contract could become superior to the rights of the
11 transferee under subsection c. of section 27 of this act.

12 (2) A transfer of real property shall be deemed to be made or
13 suffered when it becomes so far perfected that no subsequent bona
14 fide purchaser from the insurer could obtain rights superior to the
15 rights of the transferee.

16 (3) A transfer which creates an equitable lien shall not be
17 deemed to be perfected if there are available means by which a
18 legal lien could be created.

19 (4) Any transfer not perfected prior to the filing of a petition for
20 liquidation shall be deemed to be made immediately before the
21 filing of the successful petition.

22 (5) The provisions of this subsection apply whether or not there
23 are or were creditors who might have obtained any liens or persons
24 who might have become bona fide purchasers.

25 c. Any transaction of the insurer with a reinsurer shall be
26 deemed fraudulent and may be avoided by the receiver under
27 subsection a. of this section if:

28 (1) The transaction consists of the termination, adjustment or
29 settlement of a reinsurance contract in which the reinsurer is
30 released from any part of its duty to pay the originally specified
31 share of losses that had occurred prior to the time of the
32 transactions, unless the reinsurer gives a present fair equivalent
33 value for the release; and

34 (2) Any part of the transaction took place within one year prior
35 to the date of filing of the petition through which the receivership
36 was commenced.

37 d. Every director, officer, employee, stockholder, policyholder
38 and any other person acting on behalf of the insurer who is
39 concerned in any fraudulent transfer and every person receiving any
40 property from the insurer or any benefit thereof which is a
41 fraudulent transfer under subsection a. of this section shall be
42 personally liable therefor and shall be bound to account to the
43 liquidator.

44 e. (1) A receiver for an insurer-member subject to a
45 delinquency shall not void a transfer made to a federal home loan
46 bank provided that the transfer:

47 (a) is made in the ordinary course of business and in compliance
48 with the advance agreement with that federal home loan bank; and

1 (b) is valid pursuant to State law and the “Federal Home Loan
2 Bank Act” (12 U.S.C. s.1421 et seq.).

3 (2) A receiver shall not void a redemption or repurchase of any
4 stock or equity securities made by the federal home loan bank if the
5 redemption or repurchase: (a) is made within 12 months of the
6 commencement of the delinquency proceeding; or (b) has received
7 prior approval of the receiver.

8 (3) A receiver may void any transfer if the transfer is made with
9 actual intent to hinder, delay, or defraud the insurer-member, a
10 receiver appointed for the insurer-member, or existing or future
11 creditors.

12 f. Following the appointment of a receiver for an insurer-
13 member and upon request of the receiver, the federal home loan
14 bank shall, within 10 days of that request, provide a process and
15 establish a timeline for:

16 (1) the release of collateral that exceeds the lending value
17 required to support secured obligations remaining after a repayment
18 of advances, as determined in accordance with the federal home
19 loan bank security agreement;

20 (2) the release of any collateral remaining in the federal home
21 loan bank’s possession following repayment of all outstanding
22 secured obligations in full;

23 (3) the payment of fees and the operation of deposits and other
24 accounts with the federal home loan bank; and

25 (4) the possible redemption or repurchase of federal home loan
26 bank stock or excess stock of any class that an insurer-member is
27 required to own.

28 g. Upon the request of the receiver for an insurer-member, the
29 federal home loan bank shall provide any available options for the
30 insurer-member to renew or restructure an advance to defer
31 associated prepayment fees, to the extent that market conditions, the
32 terms of the advance outstanding to the insurer-member, the
33 applicable policies of the federal home loan bank, and compliance
34 with the “Federal Home Loan Bank Act” (12 U.S.C. s.1421 et seq.)
35 and corresponding regulations permit.

36 h. Nothing in this section shall affect the receiver’s rights
37 pursuant to 12 C.F.R. s.1266.4 regarding advances to an insurer-
38 member in delinquency proceedings.

39 (cf: P.L.1992, c.65, s.25)

40
41 8. Section 27 of P.L.1992, c.65 (C.17B:32-57) is amended to
42 read as follows:

43 27. a. (1) A preference is a transfer of any of the property of an
44 insurer to or for the benefit of a creditor, for or on account of an
45 antecedent debt, made or suffered by the insurer within one year
46 before the filing of a successful petition for liquidation under this
47 act, the effect of which transfer may be to enable the creditor to
48 obtain a greater percentage of this debt than another creditor of the

1 same class would receive. If a liquidation order is entered while the
2 insurer is already subject to a rehabilitation order, then such
3 transfers shall be deemed preferences if made or suffered within
4 one year before the filing of the successful petition for
5 rehabilitation, or within two years before the filing of the successful
6 petition for liquidation, whichever time is shorter.

7 (2) Any preference may be avoided by the liquidator if:

8 (a) the insurer was insolvent at the time of the transfer;

9 (b) The transfer was made within four months before the filing
10 of the petition;

11 (c) The creditor receiving it or to be benefitted thereby or his
12 agent acting with reference thereto had, at the time the transfer was
13 made, reasonable cause to believe that the insurer was insolvent or
14 was about to become insolvent; or

15 (d) The creditor receiving it was an officer, or any employee or
16 attorney or other person who was in fact in a position of comparable
17 influence on the insurer to an officer, whether or not he held such
18 position, or any shareholder holding directly or indirectly more than
19 five percent of any class of any equity security issued by the
20 insurer, or any other person, firm, corporation, association, or
21 aggregation of persons with whom the insurer did not deal at arm's
22 length.

23 (3) If the preference is voidable, the liquidator may recover the
24 property or, if it has been converted, its value, from any person who
25 has received or converted the property; except, if a bona fide
26 purchaser or lienholder has given less than fair equivalent value, he
27 shall have a lien upon the property to the extent of the consideration
28 actually given by him. If a preference by way of lien or security
29 title is voidable, the court may on due notice order the lien or title
30 to be preserved for the benefit of the estate, in which event the lien
31 or title shall pass to the liquidator.

32 b. (1) A transfer of property, other than real property, shall be
33 deemed to be made or suffered when it becomes so far perfected
34 that no subsequent lien obtainable by legal or equitable proceedings
35 on a simple contract could become superior to the rights of the
36 transferee.

37 (2) A transfer of real property shall be deemed to be made or
38 suffered when it becomes so far perfected that no subsequent bona
39 fide purchaser from the insurer could obtain rights superior to the
40 rights of the transferee.

41 (3) A transfer which creates an equitable lien shall not be
42 deemed to be perfected if there are available means by which a
43 legal lien could be created.

44 (4) A transfer not perfected prior to the filing of a petition for
45 liquidation shall be deemed to be made immediately before the
46 filing of the successful petition.

1 (5) The provisions of this subsection apply whether or not there
2 are or were creditors who might have obtained liens or persons who
3 might have become bona fide purchasers.

4 c. (1) A lien obtainable by legal or equitable proceedings upon
5 a simple contract is one arising in the ordinary course of such
6 proceedings upon the entry or docketing of a judgment or decree, or
7 upon attachment, garnishment, execution or like process, whether
8 before, upon or after judgment or decree and whether before or
9 upon levy. It does not include liens which under applicable law are
10 given a special priority over other liens which are prior in time.

11 (2) A lien obtainable by legal or equitable proceedings may
12 become superior to the rights of a transferee, or a purchaser may
13 obtain rights superior to the rights of a transferee within the
14 meaning of subsection b. of this section, if such consequences
15 would follow only from the lien or purchase itself, or from the lien
16 or purchase followed by any step wholly within the control of the
17 respective lienholder or purchaser, with or without the aid of
18 ministerial action by public officials. Such a lien could not,
19 however, become superior and such a purchase could not create
20 superior rights for the purpose of subsection b. of this section
21 through any acts subsequent to the obtaining of such a lien or
22 subsequent to such a purchase which require the agreement or
23 concurrence of any third party or which require any further judicial
24 action or ruling.

25 d. A transfer of property for or on account of a new and
26 contemporaneous consideration which is deemed under subsection
27 b. of this section to be made or suffered after the transfer because of
28 delay in perfecting it does not thereby become a transfer for or on
29 account of an antecedent debt if any acts required by the applicable
30 law to be performed in order to perfect the transfer as against liens
31 or bona fide purchasers' rights are performed within 21 days or any
32 period expressly allowed by the law, whichever is less. A transfer
33 to secure a future loan, if such a loan is actually made, or a transfer
34 which becomes security for a future loan, shall have the same effect
35 as a transfer for or on account of a new and contemporaneous
36 consideration.

37 e. If any lien deemed voidable under paragraph (2) of
38 subsection a. of this section has been dissolved by the furnishing of
39 a bond or other obligation, the surety on which has been
40 indemnified directly or indirectly by the transfer of, or the creation
41 of a lien upon, any property of an insurer before the filing of a
42 petition under this act which results in a liquidation order, the
43 indemnifying transfer or lien shall also be deemed voidable.

44 f. The property affected by any lien deemed voidable under
45 subsections a. and e. of this section shall be discharged from that
46 lien, and that property and any of the indemnifying property
47 transferred to or for the benefit of a surety shall pass to the
48 liquidator, except that the court may on due notice order any such

1 lien to be preserved for the benefit of the estate and the court may
2 direct that such conveyance be executed as may be proper or
3 adequate to evidence the title of the liquidator.

4 g. The Superior Court shall have summary jurisdiction of any
5 proceeding by the liquidator to hear and determine the rights of any
6 parties under this section. Reasonable notice of any hearing in the
7 proceeding shall be given to all parties in interest, including the
8 obligee of a releasing bond or other like obligation. If an order is
9 entered for the recovery of indemnifying property in kind or for the
10 avoidance of an indemnifying lien, the court, upon application of
11 any party in interest, shall in the same proceeding ascertain the
12 value of the property or lien, and if the value is less than the amount
13 for which the property is indemnified or less than the amount of the
14 lien, the transferee or lienholder may elect to retain the property or
15 lien upon payment of its value, as ascertained by the court, to the
16 liquidator, within a reasonable time as the court shall fix.

17 h. The liability of the surety under a releasing bond or other
18 like obligation shall be discharged to the extent of the value of the
19 indemnifying property recovered or the indemnifying lien nullified
20 and avoided by the liquidator, or where the property is retained
21 under subsection g. of this section, to the extent of the amount paid
22 to the liquidator.

23 i. If a creditor has been preferred, and afterward in good faith
24 gives the insurer further credit without security of any kind, for
25 property which becomes a part of the insurer's estate, the amount of
26 the new credit remaining unpaid at the time of the petition may be
27 set off against the preference which would otherwise be recoverable
28 from him.

29 j. If an insurer shall, directly or indirectly, within four months
30 before the filing of a successful petition for liquidation under this
31 act, or at any time in contemplation of a proceeding to liquidate it,
32 pay money or transfer property to an attorney-at-law for services
33 rendered or to be rendered, the transactions may be examined by the
34 court on its own motion or shall be examined by the court on
35 petition of the liquidator and shall be held valid only to the extent of
36 a reasonable amount to be determined by the court, and the excess
37 may be recovered by the liquidator for the benefits of the estate. If,
38 however, the attorney is in a position of influence on the insurer or
39 an affiliate thereof, payment of any money or the transfer of any
40 property to the attorney-at-law for services rendered or to be
41 rendered shall be governed by the provision of subparagraph (d) of
42 paragraph (2) of subsection a. of this section.

43 k. (1) Every officer, manager, employee, shareholder, member,
44 subscriber, attorney or any other person acting on behalf of the
45 insurer who knowingly participates in giving any preference when
46 he has reasonable cause to believe the insurer is or is about to
47 become insolvent at the time of the preference shall be personally
48 liable to the liquidator for the amount of the preference. It is

1 permissible to infer that there is a reasonable cause to so believe if
2 the transfer was made within four months before the date of filing
3 of this successful petition for liquidation.

4 (2) Every person receiving any property from the insurer or the
5 benefit thereof as a preference voidable under subsection a. of this
6 section shall be personally liable therefor and shall be bound to
7 account to the liquidator.

8 (3) Nothing in this subsection shall prejudice any other claim by
9 the liquidator against any person.

10 1. (1) A receiver for an insurer-member subject to a
11 delinquency shall not void a transfer made to a federal home loan
12 bank provided that the transfer:

13 (a) is made in the ordinary course of business and in compliance
14 with the advance agreement with that federal home loan bank; and

15 (b) is valid pursuant to State law and the "Federal Home Loan
16 Bank Act" (12 U.S.C. s.1421 et seq.).

17 (2) A receiver shall not void a redemption or repurchase of any
18 stock or equity securities made by the federal home loan bank if the
19 redemption or repurchase: (a) is made within 12 months of the
20 commencement of the delinquency proceeding; or (b) has received
21 prior approval of the receiver.

22 (3) A receiver may void any transfer if the transfer is made with
23 actual intent to hinder, delay, or defraud the insurer-member, a
24 receiver appointed for the insurer-member, or existing or future
25 creditors.

26 (cf: P.L.1992, c.65, s.27)

27

28 9. This act shall take effect on the 90th day next following
29 enactment.

30

31

32

STATEMENT

33

34 This bill revises the effects of delinquency and insolvency
35 proceedings against insurer-members of federal home loan banks.
36 Specifically, the bill provides that the commencement of a
37 delinquency proceeding with respect to an insurer-member shall not
38 operate as a stay, injunction, or prohibition of exercise by a federal
39 home loan bank of its rights regarding collateral pledged by that
40 insurer-member.

41 The bill provides that a receiver may not void a transfer of
42 money or other property arising under or in conjunction with a
43 federal home loan bank security agreement, except under certain
44 circumstances. The bill also provides that a receiver for an insurer-
45 member subject to a delinquency may not void a transfer made to a
46 federal home loan bank, except under certain circumstances.

47 The bill provides, following the appointment of a receiver for an
48 insurer-member and upon request of the receiver, that a federal

1 home loan bank is required to provide a process and establish a
2 timeline for:

3 (1) the release of the collateral that exceeds the lending value
4 required to support secured obligations remaining after a repayment
5 of advances, as determined in accordance with the federal home
6 loan bank security agreement;

7 (2) the release of any collateral remaining in the federal home
8 loan bank's possession following repayment of all outstanding
9 secured obligations in full;

10 (3) the payment of fees and the operation of deposits and other
11 accounts with the federal home loan bank; and

12 (4) the possible redemption or repurchase of federal home loan
13 bank stock or excess stock of any class that an insurer-member is
14 required to own.

15 Upon the request of the receiver for an insurer-member, the
16 federal home loan bank is required to provide any available options
17 for the insurer-member to renew or restructure an advance to defer
18 associated prepayment fees, to the extent that market conditions, the
19 terms of the advance outstanding to the insurer-member, the
20 applicable policies of the federal home loan bank, and compliance
21 with the "Federal Home Loan Bank Act" (12 U.S.C. s.1421 et seq.)
22 and corresponding regulations permit.

23 The bill provides that it does not affect the receiver's rights
24 pursuant to federal regulations regarding advances to an insurer-
25 member in delinquency proceedings.

26 Due to differences between federal and State law, federal home
27 loan banks require more stringent and burdensome collateral terms
28 from New Jersey-domiciled insurance companies, even if the credit
29 worthiness of a New Jersey-domiciled insurance company is
30 superior to other members of the bank. By amending New Jersey
31 law to comport with federal law, federal home loan banks will be
32 able to offer their New Jersey-domiciled insurance company
33 members collateral on terms similar to those offered to the other
34 federal home loan bank members, which are more favorable than
35 the terms that can be presently offered. Further, this bill requires
36 federal home loan banks to communicate and work with receivers to
37 provide available options for the federal home loan banks, where
38 permissible, to provide liquidity to help stabilize troubled insurance
39 companies.