

P.L. 2023, CHAPTER 172, *approved November 20, 2023*
 Assembly, No. 1746

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

10 C.17:30C-1 Definitions.

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

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

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

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

37 e. "Ancillary state" means any state other than a domiciliary
 38 state.

39 f. "Reciprocal state" means any state other than this State in
 40 which in substance and effect the provisions of the Uniform

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.

1 Insurers Liquidation Act, as defined in section 23 of this act are in
2 force, including the provisions requiring that the commissioner or
3 equivalent insurance supervisory official be the receiver of a
4 delinquent insurer.

5 g. "General assets" means all property, real, personal or
6 otherwise, not specifically mortgaged, pledged, deposited or
7 otherwise encumbered for the security or benefit of specified
8 persons or a limited class or classes of persons, and as to such
9 specifically encumbered property the term includes all such
10 property or its proceeds in excess of the amount necessary to
11 discharge the sum or sums secured thereby. Assets held in trust and
12 assets held on deposit for the security or benefit of all policyholders
13 or all policyholders and creditors in the United States shall be
14 deemed general assets.

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

18 i. "Special deposit claim" means any claim secured by a
19 deposit made pursuant to statute for the security or benefit of a
20 limited class or classes of persons, but not including any general
21 assets.

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

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

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

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

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

37 (cf: P.L.1975, c.113, s.1)
38

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

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

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

47 c. If the court is satisfied from reading the commissioner's
48 petition that the facts therein alleged, if established, would

1 constitute grounds for a delinquency proceeding under this act, it
2 shall issue an order to show cause as referred to in a. above.

3 d. On the return of the order to show cause, the court shall
4 either deny the application or grant the application together with
5 such other relief as the nature of the case and the interests of the
6 policyholders, creditors, stockholders, members, subscribers or the
7 public may require.

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

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

14

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

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

23 b. The court may, at any time during a proceeding under this
24 act, issue such other injunctions or orders as may be deemed
25 necessary to prevent interference with the commissioner or the
26 proceeding, or waste of the assets of the insurer, or the
27 commencement or prosecution of any actions, or the obtaining of
28 preferences, judgments, attachments or other liens, or the making of
29 any levy against the insurer or against its assets or any part thereof.

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

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

36

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

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

46 b. Every director, officer, employee, stockholder, policyholder,
47 and any other person acting on behalf of such insurer who shall be
48 concerned in any such act or deed and every person receiving

1 thereby any property of such insurer or the benefit thereof, shall be
2 personally liable therefor and shall be bound to account to the
3 commissioner.

4 c. The commissioner, as receiver in any proceeding under this
5 act, may avoid any transfer of, or lien upon the property of an
6 insurer which any creditor, stockholder or policyholder of such
7 insurer might have avoided, and may recover the property so
8 transferred, or its value from the person to whom it was transferred,
9 unless such person was a bona fide holder for value prior to the date
10 of the granting of an order to show cause under this act. Such
11 property or its value may be recovered from anyone who has
12 received it, except a bona fide holder for value as above specified.

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

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

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

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

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

30 e. Following the appointment of a receiver for an insurer-
31 member and upon request of the receiver, the federal home loan
32 bank shall, within 10 days of the request, provide a process and
33 establish a timeline for:

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

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

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

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

46 f. Upon the request of the receiver for an insurer-member, the
47 federal home loan bank shall provide any available options for the
48 insurer-member to renew or restructure an advance to defer

1 associated prepayment fees, to the extent that market conditions, the
2 terms of the advance outstanding to the insurer-member, the
3 applicable policies of the federal home loan bank, and compliance
4 with the "Federal Home Loan Bank Act" (12 U.S.C. s.1421 et seq.)
5 and corresponding regulations permit.

6 g. Nothing in this section shall affect the receiver's rights
7 pursuant to 12 C.F.R. s.1266.4 regarding advances to an insurer-
8 member in delinquency proceedings.
9 (cf: P.L.1975, c.113, s.25)

10

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

13 3. For the purposes of this act:

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

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

17 "Commissioner" means the Commissioner of Insurance of this
18 State.

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

22 "Delinquency proceeding" means any proceeding instituted
23 against an insurer for the purpose of liquidating, rehabilitating,
24 reorganizing or conserving that insurer, and any summary
25 proceeding under section 9 of this act. "Formal delinquency
26 proceeding" means any liquidation or rehabilitation proceeding.

27 "Department" means the Department of Insurance.

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

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

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

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

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

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

40 "Domiciliary state" means the state in which an insurer is
41 incorporated or organized; or, in the case of an alien insurer, its
42 state of entry.

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

44 (1) When in exchange for that property or obligation, as a fair
45 equivalent therefor, and in good faith, property is conveyed or
46 services are rendered or an obligation is incurred or an antecedent
47 debt is satisfied; or

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

5 "Federal home loan bank" means a bank as defined in
6 12 U.S.C. s.1422(1)(A).

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

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

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

24 "Insolvency" or "insolvent" means:

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

28 (i) Any capital and surplus required by law for its organization;
29 or

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

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

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

45 "Insurer" includes every person engaged as indemnitor or
46 contractor in the business of life insurance, health insurance or of
47 annuities and every such person subject to the supervisory authority
48 of, or to liquidation, rehabilitation, reorganization or conservation

1 by, the commissioner or the equivalent insurance regulator of
2 another state; every person purporting to be engaged as indemnitor
3 or contractor in the business of life insurance, health insurance or of
4 annuities in this State; every person in the process of organization
5 to become engaged as indemnitor or contractor in the business of
6 life insurance, health insurance or of annuities; and every fraternal
7 benefit society established pursuant to P.L.1959, c.167 (C.17:44A-
8 1 et seq.); every mutual benefit association established pursuant to
9 R.S.17:45-1 et seq.; every hospital service corporation established
10 pursuant to P.L.1938, c.366 (C.17:48-1 et seq.); every health
11 service corporation established pursuant to P.L.1985, c.236
12 (C.17:48E-1 et seq.); every medical service corporation established
13 pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.); every dental
14 service corporation established pursuant to P.L.1968, c.305
15 (C.17:48C-1 et seq.); every dental plan organization established
16 pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.); and every health
17 maintenance organization established pursuant to P.L.1973, c.337
18 (C.26:2J-1 et seq.).

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

21 "Preferred claim" means any claim which is accorded priority of
22 payment from the general assets of the insurer pursuant to the
23 provisions of this act.

24 "Receiver" means receiver, liquidator, rehabilitator or
25 conservator as the context requires.

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

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

38 "Special deposit claim" means any claim secured by a deposit
39 made pursuant to law for the security or benefit of a limited class or
40 classes of persons, but not including any claim secured by general
41 assets.

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

44 "Transfer" shall include the sale and every other and different
45 mode, direct or indirect, of disposing of or of parting with, property
46 or with an interest therein, or with the possession thereof, or of
47 fixing a lien upon property or upon an interest therein, absolutely or
48 conditionally, voluntarily, by or without judicial proceedings. The

1 retention of a security title to property delivered to a debtor shall be
2 deemed a transfer suffered by the debtor.

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

4

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

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

11 (1) The transaction of further business;

12 (2) The transfer of property;

13 (3) Interference with the receiver or with a proceeding under
14 this act;

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

16 (5) Dissipation and transfer of bank accounts;

17 (6) The institution or further prosecution of any actions or
18 proceedings;

19 (7) The obtaining of preferences, judgments, attachments,
20 garnishments or liens against the insurer, its assets or its
21 policyholders;

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

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

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

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

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

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

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

40

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

43 25. a. Every transfer made or suffered and every obligation
44 incurred by an insurer within one year prior to the filing of a
45 successful petition for rehabilitation or liquidation under this act
46 shall be fraudulent as to then existing and future creditors if made
47 or incurred without fair consideration, or with actual intent to
48 hinder, delay or defraud either existing or future creditors. A

1 transfer made or an obligation incurred by an insurer ordered to be
2 rehabilitated or liquidated under this act, which is fraudulent under
3 this section, may be avoided by the receiver, except as to a person
4 who in good faith is a purchaser, lienholder or obligee for a present
5 fair equivalent value, and except that any purchaser, lienholder or
6 obligee, who in good faith has given a consideration which is less
7 than fair for that transfer, lien or obligation, may retain the
8 property, lien or obligation as security for repayment. The court
9 may, on due notice, order any such transfer or obligation to be
10 preserved for the benefit of the estate, and in that event, the receiver
11 shall succeed to and may enforce the rights of the purchaser,
12 lienholder or obligee.

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

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

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

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

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

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

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

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

43 d. Every director, officer, employee, stockholder, policyholder
44 and any other person acting on behalf of the insurer who is
45 concerned in any fraudulent transfer and every person receiving any
46 property from the insurer or any benefit thereof which is a
47 fraudulent transfer under subsection a. of this section shall be

- 1 personally liable therefor and shall be bound to account to the
2 liquidator.
- 3 e. (1) A receiver for an insurer-member subject to a
4 delinquency shall not void a transfer made to a federal home loan
5 bank provided that the transfer:
- 6 (a) is made in the ordinary course of business and in compliance
7 with the advance agreement with that federal home loan bank; and
8 (b) is valid pursuant to State law and the “Federal Home Loan
9 Bank Act” (12 U.S.C. s.1421 et seq.).
- 10 (2) A receiver shall not void a redemption or repurchase of any
11 stock or equity securities made by the federal home loan bank if the
12 redemption or repurchase: (a) is made within 12 months of the
13 commencement of the delinquency proceeding; or (b) has received
14 prior approval of the receiver.
- 15 (3) A receiver may void any transfer if the transfer is made with
16 actual intent to hinder, delay, or defraud the insurer-member, a
17 receiver appointed for the insurer-member, or existing or future
18 creditors.
- 19 f. Following the appointment of a receiver for an insurer-
20 member and upon request of the receiver, the federal home loan
21 bank shall, within 10 days of that request, provide a process and
22 establish a timeline for:
- 23 (1) the release of collateral that exceeds the lending value
24 required to support secured obligations remaining after a repayment
25 of advances, as determined in accordance with the federal home
26 loan bank security agreement;
- 27 (2) the release of any collateral remaining in the federal home
28 loan bank’s possession following repayment of all outstanding
29 secured obligations in full;
- 30 (3) the payment of fees and the operation of deposits and other
31 accounts with the federal home loan bank; and
- 32 (4) the possible redemption or repurchase of federal home loan
33 bank stock or excess stock of any class that an insurer-member is
34 required to own.
- 35 g. Upon the request of the receiver for an insurer-member, the
36 federal home loan bank shall provide any available options for the
37 insurer-member to renew or restructure an advance to defer
38 associated prepayment fees, to the extent that market conditions, the
39 terms of the advance outstanding to the insurer-member, the
40 applicable policies of the federal home loan bank, and compliance
41 with the “Federal Home Loan Bank Act” (12 U.S.C. s.1421 et seq.)
42 and corresponding regulations permit.
- 43 h. Nothing in this section shall affect the receiver’s rights
44 pursuant to 12 C.F.R. s.1266.4 regarding advances to an insurer-
45 member in delinquency proceedings.
- 46 (cf: P.L.1992, c.65, s.25)

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

3 27. a. (1) A preference is a transfer of any of the property of
4 an insurer to or for the benefit of a creditor, for or on account of an
5 antecedent debt, made or suffered by the insurer within one year
6 before the filing of a successful petition for liquidation under this
7 act, the effect of which transfer may be to enable the creditor to
8 obtain a greater percentage of this debt than another creditor of the
9 same class would receive. If a liquidation order is entered while the
10 insurer is already subject to a rehabilitation order, then such
11 transfers shall be deemed preferences if made or suffered within
12 one year before the filing of the successful petition for
13 rehabilitation, or within two years before the filing of the successful
14 petition for liquidation, whichever time is shorter.

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

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

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

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

23 (d) The creditor receiving it was an officer, or any employee or
24 attorney or other person who was in fact in a position of comparable
25 influence on the insurer to an officer, whether or not he held such
26 position, or any shareholder holding directly or indirectly more than
27 five percent of any class of any equity security issued by the
28 insurer, or any other person, firm, corporation, association, or
29 aggregation of persons with whom the insurer did not deal at arm's
30 length.

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

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

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

- 1 (3) A transfer which creates an equitable lien shall not be
2 deemed to be perfected if there are available means by which a
3 legal lien could be created.
- 4 (4) A transfer not perfected prior to the filing of a petition for
5 liquidation shall be deemed to be made immediately before the
6 filing of the successful petition.
- 7 (5) The provisions of this subsection apply whether or not there
8 are or were creditors who might have obtained liens or persons who
9 might have become bona fide purchasers.
- 10 c. (1) A lien obtainable by legal or equitable proceedings upon
11 a simple contract is one arising in the ordinary course of such
12 proceedings upon the entry or docketing of a judgment or decree, or
13 upon attachment, garnishment, execution or like process, whether
14 before, upon or after judgment or decree and whether before or
15 upon levy. It does not include liens which under applicable law are
16 given a special priority over other liens which are prior in time.
- 17 (2) A lien obtainable by legal or equitable proceedings may
18 become superior to the rights of a transferee, or a purchaser may
19 obtain rights superior to the rights of a transferee within the
20 meaning of subsection b. of this section, if such consequences
21 would follow only from the lien or purchase itself, or from the lien
22 or purchase followed by any step wholly within the control of the
23 respective lienholder or purchaser, with or without the aid of
24 ministerial action by public officials. Such a lien could not,
25 however, become superior and such a purchase could not create
26 superior rights for the purpose of subsection b. of this section
27 through any acts subsequent to the obtaining of such a lien or
28 subsequent to such a purchase which require the agreement or
29 concurrence of any third party or which require any further judicial
30 action or ruling.
- 31 d. A transfer of property for or on account of a new and
32 contemporaneous consideration which is deemed under subsection
33 b. of this section to be made or suffered after the transfer because of
34 delay in perfecting it does not thereby become a transfer for or on
35 account of an antecedent debt if any acts required by the applicable
36 law to be performed in order to perfect the transfer as against liens
37 or bona fide purchasers' rights are performed within 21 days or any
38 period expressly allowed by the law, whichever is less. A transfer
39 to secure a future loan, if such a loan is actually made, or a transfer
40 which becomes security for a future loan, shall have the same effect
41 as a transfer for or on account of a new and contemporaneous
42 consideration.
- 43 e. If any lien deemed voidable under paragraph (2) of
44 subsection a. of this section has been dissolved by the furnishing of
45 a bond or other obligation, the surety on which has been
46 indemnified directly or indirectly by the transfer of, or the creation
47 of a lien upon, any property of an insurer before the filing of a

1 petition under this act which results in a liquidation order, the
2 indemnifying transfer or lien shall also be deemed voidable.

3 f. The property affected by any lien deemed voidable under
4 subsections a. and e. of this section shall be discharged from that
5 lien, and that property and any of the indemnifying property
6 transferred to or for the benefit of a surety shall pass to the
7 liquidator, except that the court may on due notice order any such
8 lien to be preserved for the benefit of the estate and the court may
9 direct that such conveyance be executed as may be proper or
10 adequate to evidence the title of the liquidator.

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

24 h. The liability of the surety under a releasing bond or other
25 like obligation shall be discharged to the extent of the value of the
26 indemnifying property recovered or the indemnifying lien nullified
27 and avoided by the liquidator, or where the property is retained
28 under subsection g. of this section, to the extent of the amount paid
29 to the liquidator.

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

36 j. If an insurer shall, directly or indirectly, within four months
37 before the filing of a successful petition for liquidation under this
38 act, or at any time in contemplation of a proceeding to liquidate it,
39 pay money or transfer property to an attorney-at-law for services
40 rendered or to be rendered, the transactions may be examined by the
41 court on its own motion or shall be examined by the court on
42 petition of the liquidator and shall be held valid only to the extent of
43 a reasonable amount to be determined by the court, and the excess
44 may be recovered by the liquidator for the benefits of the estate. If,
45 however, the attorney is in a position of influence on the insurer or
46 an affiliate thereof, payment of any money or the transfer of any
47 property to the attorney-at-law for services rendered or to be

1 rendered shall be governed by the provision of subparagraph (d) of
2 paragraph (2) of subsection a. of this section.

3 k. (1) Every officer, manager, employee, shareholder, member,
4 subscriber, attorney or any other person acting on behalf of the
5 insurer who knowingly participates in giving any preference when
6 he has reasonable cause to believe the insurer is or is about to
7 become insolvent at the time of the preference shall be personally
8 liable to the liquidator for the amount of the preference. It is
9 permissible to infer that there is a reasonable cause to so believe if
10 the transfer was made within four months before the date of filing
11 of this successful petition for liquidation.

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

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

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

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

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

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

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

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

35
36 9. This act shall take effect on the 90th day next following
37 enactment.

38

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41

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