SENATE, No. 2947



STATE OF NEW JERSEY

220th LEGISLATURE



INTRODUCED JUNE 29, 2022

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senator Singleton

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



An Act concerning insurer insolvency and amending P.L.1975, c.113 and P.L.1992, c.65.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

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

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

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

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

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

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

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

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

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

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

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

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

m. “Insurer-member” means an insurer that is a member of a Federal Home Loan Bank.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. For the purposes of this act:

“Advance” shall have the same meaning as that term is defined at 12 C.F.R. s.1266.1.

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

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

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

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

"Department" means the Department of Insurance.

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

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

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

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

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

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

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

"Fair consideration" is given for property or obligation:

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

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

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

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

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

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

"Insolvency" or "insolvent" means:

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

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

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

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

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

"Insurer" includes every person engaged as indemnitor or contractor in the business of life insurance, health insurance or of annuities and every such person subject to the supervisory authority of, or to liquidation, rehabilitation, reorganization or conservation by, the commissioner or the equivalent insurance regulator of another state; every person purporting to be engaged as indemnitor or contractor in the business of life insurance, health insurance or of annuities in this State; every person in the process of organization to become engaged as indemnitor or contractor in the business of life insurance, health insurance or of annuities; and every fraternal benefit society established pursuant to P.L.1959, c.167 (C.17:44A-1 et seq.); every mutual benefit association established pursuant to R.S.17:45-1 et seq.; every hospital service corporation established pursuant to P.L.1938, c.366 (C.17:48-1 et seq.); every health service corporation established pursuant to P.L.1985, c.236 (C.17:48E-1 et seq.); every medical service corporation established pursuant to P.L.1940, c.74 (C.17:48A-1 et seq.); every dental service corporation established pursuant to P.L.1968, c.305 (C.17:48C-1 et seq.); every dental plan organization established pursuant to P.L.1979, c.478 (C.17:48D-1 et seq.); and every health maintenance organization established pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.).

“Insurer-member” means an insurer that is a member of a federal home loan bank.

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

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

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

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

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

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

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

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

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

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

(1) The transaction of further business;

(2) The transfer of property;

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

(4) Waste of the insurer's assets;

(5) Dissipation and transfer of bank accounts;

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

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

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

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

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

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

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

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

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

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

25. a. Every transfer made or suffered and every obligation incurred by an insurer within one year prior to the filing of a successful petition for rehabilitation or liquidation under this act shall be fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay or defraud either existing or future creditors. A transfer made or an obligation incurred by an insurer ordered to be rehabilitated or liquidated under this act, which is fraudulent under this section, may be avoided by the receiver, except as to a person who in good faith is a purchaser, lienholder or obligee for a present fair equivalent value, and except that any purchaser, lienholder or obligee, who in good faith has given a consideration which is less than fair for that transfer, lien or obligation, may retain the property, lien or obligation as security for repayment. The court may, on due notice, order any such transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienholder or obligee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATEMENT

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

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

The bill provides, following the appointment of a receiver for an insurer-member and upon request of the receiver, that a federal home loan bank is required to provide a process and establish a timeline for:

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

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

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

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

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

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

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