

**SENATE, No. 851**

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**STATE OF NEW JERSEY**

**219th LEGISLATURE**

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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.



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.

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.

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

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.