
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1415 Session of
2014

INTRODUCED BY EICHELBERGER, WHITE AND GORDNER, JUNE 12, 2014

REFERRED TO BANKING AND INSURANCE, JUNE 12, 2014

AN ACT

1 Amending the act of May 17, 1921 (P.L.789, No.285), entitled, as
2 amended, "An act relating to insurance; establishing an
3 insurance department; and amending, revising, and
4 consolidating the law relating to the licensing,
5 qualification, regulation, examination, suspension, and
6 dissolution of insurance companies, Lloyds associations,
7 reciprocal and inter-insurance exchanges, and certain
8 societies and orders, the examination and regulation of fire
9 insurance rating bureaus, and the licensing and regulation of
10 insurance agents and brokers; the service of legal process
11 upon foreign insurance companies, associations or exchanges;
12 providing penalties, and repealing existing laws," further
13 providing for definitions, for injunctions and order, for
14 fraudulent transfers prior to petition and for voidable
15 preferences and liens.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 503 of act of May 17, 1921 (P.L.789,
19 No.285), known as The Insurance Department Act of 1921, is
20 amended by adding a definitions to read:

21 Section 503. Definitions.--The following words and phrases
22 when used in this act shall have, unless the context clearly
23 indicates otherwise, the meanings given to them in this section:

24 * * *

25 "Federal Home Loan Bank" means a bank as defined in section

1 1422 of the Home Owners' Loan Act (48 Stat. 128, 12 U.S.C. §
2 1422).

3 "Federal Home Loan Bank Act" means the Home Owners' Loan Act
4 (48 Stat. 128, 12 U.S.C. § 1422).

5 "Federal Home Loan Bank Security Agreement" means a pledge,
6 security, collateral or guarantee or a similar arrangement or
7 credit enhancement in favor of a Federal Home Loan Bank.

8 * * *

9 "Insurer member" means an insurer that is a member of a
10 Federal Home Loan Bank.

11 * * *

12 Section 2. Section 505 of the act is amended by adding a
13 subsection to read:

14 Section 505. Injunctions and Orders.--* * *

15 (a.1) Notwithstanding subsection (a) or any other provision
16 of this article to the contrary, no Federal Home Loan Bank may
17 be stayed, enjoined or prohibited from exercising a right or
18 enforcing an obligation under a Federal Home Loan Bank Security
19 Agreement relating to collateral pledged by an insurer member to
20 the Federal Home Loan Bank.

21 * * *

22 Section 3. Section 528(a) of the act, added December 14,
23 1977 (P.L.280, No.92), is amended to read:

24 Section 528. Fraudulent Transfers Prior to Petition.--(a)
25 Every transfer made or suffered and every obligation incurred by
26 an insurer within one year prior to the filing of a successful
27 petition for rehabilitation or liquidation under this article is
28 fraudulent as to then existing and future creditors if made or
29 incurred without fair consideration, or with actual intent to
30 hinder, delay, or defraud either existing or future creditors. A

1 transfer made or an obligation incurred by an insurer ordered to
2 be rehabilitated or liquidated under this article, which is
3 fraudulent under this section, may be avoided by the receiver,
4 except as to a person who in good faith is a purchaser, lienor,
5 or obligee for a present fair equivalent value, and except that
6 any purchaser, lienor, or obligee, who in good faith has given a
7 consideration less than fair for such transfer, lien, or
8 obligation, may retain the property, lien or obligation as
9 security for repayment. The court may, on due notice, order any
10 such transfer or obligation to be preserved for the benefit of
11 the estate, and in that event, the receiver shall succeed to and
12 may enforce the rights of the purchaser, lienor, or obligee.
13 Notwithstanding the foregoing or any other provision of this
14 article to the contrary, a receiver may not avoid a transfer of
15 money or other property arising under or in connection with a
16 Federal Home Loan Bank Security Agreement that is made before
17 the commencement of a formal delinquency proceeding under this
18 article, in the ordinary course of business and in compliance
19 with the Federal Home Loan Bank Security Agreement unless the
20 transfer was made with actual intent to hinder, delay or defraud
21 the insurer member, the receiver appointed for the insurer
22 member or existing or future creditors.

23 * * *

24 Section 4. Section 530(a) of the act, added December 14,
25 1977 (P.L.280, No.92), is amended and the section is amended by
26 adding subsections to read:

27 Section 530. Voidable Preferences and Liens.--(a) A
28 preference is a transfer of any of the property of an insurer to
29 or for the benefit of a creditor, for or on account of an
30 antecedent debt, made or suffered by the insurer within one year

1 before the filing of a successful petition for liquidation under
2 this article the effect of which transfer may be to enable the
3 creditor to obtain a greater percentage of this debt than
4 another creditor of the same class would receive. If a
5 liquidation order is entered while the insurer is already
6 subject to a rehabilitation order, then transfers otherwise
7 qualifying shall be deemed preferences if made or suffered
8 within one year before the filing of the successful petition for
9 rehabilitation or within two years before the filing of the
10 successful petition for liquidation, whichever time is shorter.

11 Any preference may be avoided by the liquidator, if (i) the
12 insurer was insolvent at the time of the transfer; (ii) the
13 transfer was made within four months before the filing of the
14 petition; (iii) the creditor receiving it or to be benefited
15 thereby or his agent acting with reference thereto had, at the
16 time when the transfer was made, reasonable cause to believe
17 that the insurer was insolvent or was about to become insolvent;
18 or (iv) the creditor receiving it was an officer, any employe or
19 attorney or other person who was in fact in a position of
20 comparable influence in the insurer to an officer whether or not
21 he held such position, or any shareholder holding directly or
22 indirectly more than five per centum of any class of any equity
23 security issued by the insurer, or any other person, firm,
24 corporation, association, or aggregation of persons with whom
25 the insurer did not deal at arm's length. [Where the preference
26 is voidable, the liquidator may recover the property or, if it
27 has been converted, its value from any person who has received
28 or converted the property, except where a bona fide purchaser or
29 lienor has given less than fair equivalent value, he shall have
30 a lien upon the property to the extent of the consideration

1 actually given by him. Where a preference by way of lien or
2 security title is voidable, the court may on due notice order
3 the lien or title to be preserved for the benefit of the estate,
4 in which event the lien or title shall pass to the liquidator.]

5 (a.1) Notwithstanding subsection (a) or any other provision
6 of this act to the contrary, (i) a receiver may not avoid a
7 transfer of money or other property arising under or in
8 connection with a Federal Home Loan Bank Security Agreement that
9 is made before the commencement of a formal proceeding under
10 this article in the ordinary course of business and in
11 compliance with the Federal Home Loan Bank Security Agreement
12 unless the transfer was made with the intent to hinder, delay or
13 defraud the insurer member, a receiver appointed for the insurer
14 member or existing or future creditors; and (ii) a receiver
15 shall not void a redemption or repurchase of a stock or equity
16 security which was made by the Federal Home Loan Bank within
17 four months of a formal commencement of the delinquency
18 proceedings which received prior approval of the receiver.

19 (a.2) 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 ten days of the request, provide a process
22 and establish timing for (i) the release of collateral that
23 exceeds the lending value as determined in accordance with the
24 Federal Home Loan Bank Security Agreement required to support
25 secured obligations remaining after repayment of any advances;
26 (ii) the release of collateral remaining in the Federal Home
27 Loan Bank's possession following repayment of all outstanding
28 secured obligations in full; (iii) the payment of fees and the
29 operation of deposits and other accounts with the Federal Home
30 Loan Bank; and (iv) the possible redemption or repurchase of the

1 Federal Home Loan Bank stock or excess stock of any class that
2 an insurer member is required to own.

3 (a.3) Upon the request of the receiver for an insurer
4 member, the Federal Home Loan Bank shall provide available
5 options for the insurer member to renew or restructure an
6 advance to defer associated prepayment fees, to the extent that
7 the market conditions, the terms of the advance outstanding to
8 the insurer member, the applicable policies of the Federal Home
9 Loan Bank and compliance with the Federal Home Loan Bank Act and
10 corresponding regulations permit.

11 (a.4) Nothing in this section shall affect the receiver's
12 rights pursuant to 12 C.F.R. § 1266.4 (relating to limitations
13 on access to advances).

14 * * *

15 Section 5. This act shall take effect in 60 days.