

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2353 Session of 2014

INTRODUCED BY EVANKOVICH, KRIEGER, MILLARD, JAMES, MUSTIO, BENNINGHOFF, TURZAI, MAHER, QUINN AND GROVE, JUNE 17, 2014

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 25, 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," in
13 suspension of business - involuntary dissolutions, further
14 providing for definitions, for injunctions and orders, for
15 fraudulent transfers prior to petition and for voidable
16 preferences and liens.

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

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

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

1 \* \* \*

2 ~~"FHLBank" means a bank as defined in section 2(1)(A) of the~~ <--  
3 ~~Federal Home Loan Bank Act (47 Stat. 725, 12 U.S.C. § 1422(1)~~  
4 ~~(A)).~~

5 "Federal Home Loan Bank Act" means the Federal Home Loan Bank  
6 Act (47 Stat. 725, 12 U.S.C. § 1421 et seq.).

7 "FHLBANK" MEANS A BANK AS DEFINED IN SECTION 2(1)(A) OF THE <--  
8 FEDERAL HOME LOAN BANK ACT (47 STAT. 725, 12 U.S.C. § 1422(1)  
9 (A)).

10 "FHLBank security agreement" means any pledge, security,  
11 collateral or guarantee agreement or any similar arrangement or  
12 credit enhancement in favor of an FHLBank.

13 \* \* \*

14 "Insurer-member" means an insurer that is a member of an  
15 FHLBank.

16 \* \* \*

17 ~~Section 2. Sections 505(b), 528(a) and 530(b), (c), (d) and~~ <--  
18 ~~(e) of the act, added December 14, 1977 (P.L.280, No.92), are~~  
19 ~~amended to read:~~

20 SECTION 2. SECTION 505 OF THE ACT IS AMENDED BY ADDING A <--  
21 SUBSECTION TO READ:

22 Section 505. Injunctions and Orders.--\* \* \*

23 ~~(b) [The receiver may apply to any court outside of the~~ <--  
24 ~~Commonwealth for the relief described in subsection (a) or~~  
25 ~~suspension of any insurance licenses issued by the~~  
26 ~~commissioner.] Notwithstanding subsection (a) or any other~~

27 (A.1) NOTWITHSTANDING SUBSECTION (A) OR ANY OTHER provision <--  
28 of this article to the contrary, no FHLBank shall be stayed,  
29 enjoined or prohibited from exercising any right or enforcing  
30 any obligation under an FHLBank security agreement, relating to

1 collateral pledged by an insurer-member to the FHLBank.

2 \* \* \*

<--

3 SECTION 3. SECTION 528(A) OF THE ACT, ADDED DECEMBER 14,  
4 1977 (P.L.280, NO.92), IS AMENDED TO READ:

5 Section 528. Fraudulent Transfers Prior to Petition.--(a)

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

24 Notwithstanding this subsection or any other provision of this  
25 article to the contrary, a receiver shall not avoid a transfer  
26 of money or other property arising under or in connection with  
27 an FHLBank security agreement that is made before the  
28 commencement of a formal delinquency proceeding under this  
29 article in the ordinary course of business and in compliance  
30 with the FHLBank security agreement unless such transfer was

1 made with actual intent to hinder, delay or defraud the insurer-  
2 member, the receiver appointed for the insurer-member or  
3 existing or future creditors.

4 \* \* \*

5 SECTION 4. SECTION 530 OF THE ACT IS AMENDED BY ADDING <--  
6 SUBSECTIONS TO READ:

7 Section 530. Voidable Preferences and Liens.--\* \* \*

8 ~~{(b) A transfer of property other than real property shall <--~~  
9 ~~be deemed to be made or suffered when it becomes so far~~  
10 ~~perfected that no subsequent lien obtainable by legal or~~  
11 ~~equitable proceedings on a simple contract could become superior~~  
12 ~~to the rights of the transferee.--~~

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

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

20 ~~A transfer not perfected prior to the filing of a petition~~  
21 ~~for liquidation shall be deemed to be made immediately before~~  
22 ~~the filing of the successful petition.~~

23 ~~The provisions of this subsection apply whether or not there~~  
24 ~~are or were creditors who might have obtained liens or persons~~  
25 ~~who might have become bona fide purchasers.~~

26 ~~(c) A lien obtainable by legal or equitable proceedings upon~~  
27 ~~a simple contract is one arising in the ordinary course of such~~  
28 ~~proceedings upon the entry or docketing of a judgment or decree,~~  
29 ~~or upon attachment, garnishment, execution, or like process,~~  
30 ~~whether before, upon, or after judgment or decree and whether~~

1 ~~before or upon levy. It does not include liens which under~~  
2 ~~applicable law are given a special priority over other liens~~  
3 ~~which are prior in time.~~

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

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

1 ~~(e) If any lien deemed voidable under the second paragraph~~  
2 ~~of subsection (a) has been dissolved by the furnishing of a bond~~  
3 ~~or other obligation, the surety on which has been indemnified~~  
4 ~~directly or indirectly by the transfer of or the creation of a~~  
5 ~~lien upon any property of an insurer before the filing of a~~  
6 ~~petition under this article which results in a liquidation~~  
7 ~~order, the indemnifying transfer or lien shall also be deemed~~  
8 ~~voidable.] (b) Notwithstanding subsection (a) or any other~~

9 (A.1) NOTWITHSTANDING SUBSECTION (A) OR ANY OTHER provision <--  
10 of this article to the contrary, (i) a receiver shall not avoid  
11 a transfer of money or other property arising under or in  
12 connection with an FHLBank security agreement that is made  
13 before the commencement of a formal proceeding under this  
14 article in the ordinary course of business and in compliance  
15 with the security agreement unless such transfer was made with  
16 actual intent to hinder, delay or defraud the insurer-member, a  
17 receiver appointed for the insurer-member or existing or future  
18 creditors; and (ii) a receiver shall not void a redemption or  
19 repurchase of any stock or equity securities which was made by  
20 the FHLBank within four months of a formal commencement of the  
21 delinquency proceedings or which received prior approval of the  
22 receiver.

23 ~~(e)~~ (A.2) Following the appointment of a receiver for an <--  
24 insurer-member and upon request of the receiver, the FHLBank  
25 shall, within ten days of such request, provide a process and  
26 establish timing for all of the following:

27 (1) The release of collateral that exceeds the lending  
28 value, as determined in accordance with the FHLBank security  
29 agreement, required to support secured obligations remaining  
30 after any repayment of advances.

1 (2) The release of any collateral remaining in the FHLBank's  
2 possession following repayment of all outstanding secured  
3 obligations in full.

4 (3) The payment of fees and the operation of deposits and  
5 other accounts with the FHLBank.

6 (4) The possible redemption or repurchase of FHLBank stock  
7 or excess stock of any class that an insurer-member is required  
8 to own.

9 ~~(d)~~ (A.3) Upon the request of the receiver for an insurer- <--  
10 member, the FHLBank shall provide any available options for such  
11 insurer-member to renew or restructure an advance to defer  
12 associated prepayment fees, to the extent that market  
13 conditions, the terms of the advance outstanding to the insurer-  
14 member, the applicable policies of the FHLBank and compliance  
15 with the Federal Home Loan Bank Act and corresponding  
16 regulations permit.

17 ~~(e)~~ (A.4) Nothing in this section shall affect the <--  
18 receiver's rights pursuant to section 12 CFR § 1266.4 (relating  
19 to limitations on access to advances) regarding advances to an  
20 insurer-member in delinquency proceedings.

21 \* \* \*

22 Section 3 5. This act shall take effect immediately. <--