

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1415 Session of 2014

INTRODUCED BY EICHELBERGER, WHITE, GORDNER, RAFFERTY, WOZNIAK AND YUDICHAK, JUNE 12, 2014

SENATOR WHITE, BANKING AND INSURANCE, AS AMENDED, SEPTEMBER 16, 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 \* \* \*

1 "Federal Home Loan Bank" means a bank as defined in section  
2 ~~1422 of the Home Owners' Loan Act (48 Stat. 128, 12 U.S.C. §~~ <--  
3 ~~1422).~~

4 ~~"Federal Home Loan Bank Act" means the Home Owners' Loan Act~~  
5 ~~(48 Stat. 128, 12 U.S.C. § 1422).~~ 2(1)(A) OF THE FEDERAL HOME <--  
6 LOAN BANK ACT (12 U.S.C. § 1422(1)(A)).

7 "FEDERAL HOME LOAN BANK ACT" MEANS THE FEDERAL HOME LOAN BANK  
8 ACT (47 STAT. 725, 12 U.S.C. § 1421 ET SEQ.).

9 "Federal Home Loan Bank Security Agreement" means a ANY <--  
10 pledge, security, collateral or guarantee AGREEMENT or a ANY <--  
11 similar arrangement or credit enhancement in favor of a Federal  
12 Home Loan Bank.

13 \* \* \*

14 "Insurer member" means an insurer that is a member of a  
15 Federal Home Loan Bank.

16 \* \* \*

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

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

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

26 \* \* \*

27 Section 3. Section 528(a) of the act, added December 14,  
28 1977 (P.L.280, No.92), is amended to read:

29 Section 528. Fraudulent Transfers Prior to Petition.--(a)  
30 Every transfer made or suffered and every obligation incurred by

1 an insurer within one year prior to the filing of a successful  
2 petition for rehabilitation or liquidation under this article is  
3 fraudulent as to then existing and future creditors if made or  
4 incurred without fair consideration, or with actual intent to  
5 hinder, delay, or defraud either existing or future creditors. A  
6 transfer made or an obligation incurred by an insurer ordered to  
7 be rehabilitated or liquidated under this article, which is  
8 fraudulent under this section, may be avoided by the receiver,  
9 except as to a person who in good faith is a purchaser, lienor,  
10 or obligee for a present fair equivalent value, and except that  
11 any purchaser, lienor, or obligee, who in good faith has given a  
12 consideration less than fair for such transfer, lien, or  
13 obligation, may retain the property, lien or obligation as  
14 security for repayment. The court may, on due notice, order any  
15 such transfer or obligation to be preserved for the benefit of  
16 the estate, and in that event, the receiver shall succeed to and  
17 may enforce the rights of the purchaser, lienor, or obligee.  
18 Notwithstanding the foregoing or any other provision of this  
19 article to the contrary, a receiver may not avoid a transfer of  
20 money or other property arising under or in connection with a  
21 Federal Home Loan Bank Security Agreement that is made before  
22 the commencement of a formal delinquency proceeding under this  
23 article, in the ordinary course of business and in compliance  
24 with the Federal Home Loan Bank Security Agreement unless the  
25 transfer was made with actual intent to hinder, delay or defraud  
26 the insurer member, the receiver appointed for the insurer  
27 member or existing or future creditors.

28 \* \* \*

29 Section 4. Section 530(a) of the act, added December 14,  
30 1977 (P.L.280, No.92), is amended and the section is amended by

1 adding subsections to read:

2 Section 530. Voidable Preferences and Liens.--(a) A  
3 preference is a transfer of any of the property of an insurer to  
4 or for the benefit of a creditor, for or on account of an  
5 antecedent debt, made or suffered by the insurer within one year  
6 before the filing of a successful petition for liquidation under  
7 this article the effect of which transfer may be to enable the  
8 creditor to obtain a greater percentage of this debt than  
9 another creditor of the same class would receive. If a  
10 liquidation order is entered while the insurer is already  
11 subject to a rehabilitation order, then transfers otherwise  
12 qualifying shall be deemed preferences if made or suffered  
13 within one year before the filing of the successful petition for  
14 rehabilitation or within two years before the filing of the  
15 successful petition for liquidation, whichever time is shorter.

16 Any preference may be avoided by the liquidator, if (i) the  
17 insurer was insolvent at the time of the transfer; (ii) the  
18 transfer was made within four months before the filing of the  
19 petition; (iii) the creditor receiving it or to be benefited  
20 thereby or his agent acting with reference thereto had, at the  
21 time when the transfer was made, reasonable cause to believe  
22 that the insurer was insolvent or was about to become insolvent;  
23 or (iv) the creditor receiving it was an officer, any employe or  
24 attorney or other person who was in fact in a position of  
25 comparable influence in the insurer to an officer whether or not  
26 he held such position, or any shareholder holding directly or  
27 indirectly more than five per centum of any class of any equity  
28 security issued by the insurer, or any other person, firm,  
29 corporation, association, or aggregation of persons with whom  
30 the insurer did not deal at arm's length. [Where the preference

1 is voidable, the liquidator may recover the property or, if it  
2 has been converted, its value from any person who has received  
3 or converted the property, except where a bona fide purchaser or  
4 lienor has given less than fair equivalent value, he shall have  
5 a lien upon the property to the extent of the consideration  
6 actually given by him. Where a preference by way of lien or  
7 security title is voidable, the court may on due notice order  
8 the lien or title to be preserved for the benefit of the estate,  
9 in which event the lien or title shall pass to the liquidator.]

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

24 (a.2) Following the appointment of a receiver for an insurer  
25 member and upon request of the receiver, the Federal Home Loan  
26 Bank shall, within ten days of the request, provide a process  
27 and establish timing for (i) the release of collateral that  
28 exceeds the lending value as determined in accordance with the  
29 Federal Home Loan Bank Security Agreement required to support  
30 secured obligations remaining after repayment of any advances;

1 (ii) the release of collateral remaining in the Federal Home  
2 Loan Bank's possession following repayment of all outstanding  
3 secured obligations in full; (iii) the payment of fees and the  
4 operation of deposits and other accounts with the Federal Home  
5 Loan Bank; and (iv) the possible redemption or repurchase of the  
6 Federal Home Loan Bank stock or excess stock of any class that  
7 an insurer member is required to own.

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

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

19 \* \* \*

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