
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2353 Session of
2014

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

REFERRED TO COMMITTEE ON INSURANCE, JUNE 17, 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:

25 * * *

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

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

6 "FHLBank security agreement" means any pledge, security,
7 collateral or guarantee agreement or any similar arrangement or
8 credit enhancement in favor of an FHLBank.

9 * * *

10 "Insurer-member" means an insurer that is a member of an
11 FHLBank.

12 * * *

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

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

17 (b) [The receiver may apply to any court outside of the
18 Commonwealth for the relief described in subsection (a) or
19 suspension of any insurance licenses issued by the
20 commissioner.] Notwithstanding subsection (a) or any other
21 provision of this article to the contrary, no FHLBank shall be
22 stayed, enjoined or prohibited from exercising any right or
23 enforcing any obligation under an FHLBank security agreement,
24 relating to collateral pledged by an insurer-member to the
25 FHLBank.

26 Section 528. Fraudulent Transfers Prior to Petition.--(a)
27 Every transfer made or suffered and every obligation incurred by
28 an insurer within one year prior to the filing of a successful
29 petition for rehabilitation or liquidation under this article is
30 fraudulent as to then existing and future creditors if made or

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

25 * * *

26 Section 530. Voidable Preferences and Liens.--* * *

27 [(b) A transfer of property other than real property shall
28 be deemed to be made or suffered when it becomes so far
29 perfected that no subsequent lien obtainable by legal or
30 equitable proceedings on a simple contract could become superior

1 to the rights of the transferee.

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

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

9 A transfer not perfected prior to the filing of a petition
10 for liquidation shall be deemed to be made immediately before
11 the filing of the successful petition.

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

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

23 A lien obtainable by legal or equitable proceedings could
24 become superior to the rights of a transferee, or a purchaser
25 could obtain rights superior to the rights of a transferee
26 within the meaning of subsection (b), if such consequences would
27 follow only from the lien or purchase itself, or from the lien
28 or purchase followed by any step wholly within the control of
29 the respective lienholder or purchaser, with or without the aid
30 of ministerial action by public officials. Such a lien could

1 not, however, become superior and such a purchase could not
2 create superior rights for the purpose of subsection (b) through
3 any acts subsequent to the obtaining of such a lien or
4 subsequent to such a purchase which require the agreement or
5 concurrence of any third party or which require any further
6 judicial action, or ruling.

7 (d) A transfer of property for or on account of a new and
8 contemporaneous consideration which is deemed under subsection
9 (b) to be made or suffered after the transfer because of delay
10 in perfecting it does not thereby become a transfer for or on
11 account of an antecedent debt if any acts required by the
12 applicable law to be performed in order to perfect the transfer
13 as against liens or bona fide purchasers' rights are performed
14 within twenty-one days or any period expressly allowed by the
15 law, whichever is less. A transfer to secure a future loan, if
16 such a loan is actually made, or a transfer which becomes
17 security for a future loan, shall have the same effect as a
18 transfer for or on account of a new and contemporaneous
19 consideration.

20 (e) If any lien deemed voidable under the second paragraph
21 of subsection (a) has been dissolved by the furnishing of a bond
22 or other obligation, the surety on which has been indemnified
23 directly or indirectly by the transfer of or the creation of a
24 lien upon any property of an insurer before the filing of a
25 petition under this article which results in a liquidation
26 order, the indemnifying transfer or lien shall also be deemed
27 voidable.] (b) Notwithstanding subsection (a) or any other
28 provision of this article to the contrary, (i) a receiver shall
29 not avoid a transfer of money or other property arising under or
30 in connection with an FHLBank security agreement that is made

1 before the commencement of a formal proceeding under this
2 article in the ordinary course of business and in compliance
3 with the security agreement unless such transfer was made with
4 actual intent to hinder, delay or defraud the insurer-member, a
5 receiver appointed for the insurer-member or existing or future
6 creditors; and (ii) a receiver shall not void a redemption or
7 repurchase of any stock or equity securities which was made by
8 the FHLBank within four months of a formal commencement of the
9 delinquency proceedings or which received prior approval of the
10 receiver.

11 (c) Following the appointment of a receiver for an insurer-
12 member and upon request of the receiver, the FHLBank shall,
13 within ten days of such request, provide a process and establish
14 timing for all of the following:

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

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

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

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

27 (d) Upon the request of the receiver for an insurer-member,
28 the FHLBank shall provide any available options for such
29 insurer-member to renew or restructure an advance to defer
30 associated prepayment fees, to the extent that market

1 conditions, the terms of the advance outstanding to the insurer-
2 member, the applicable policies of the FHLBank and compliance
3 with the Federal Home Loan Bank Act and corresponding
4 regulations permit.

5 (e) Nothing in this section shall affect the receiver's
6 rights pursuant to section 12 CFR § 1266.4 (relating to
7 limitations on access to advances) regarding advances to an
8 insurer-member in delinquency proceedings.

9 * * *

10 Section 3. This act shall take effect immediately.