

By: Representative Zuber

To: Insurance

HOUSE BILL NO. 1172

1 AN ACT TO PROVIDE PROCEDURES AND CERTAIN RIGHTS REGARDING
 2 COLLATERAL IN FEDERAL HOME LOAN BANKS' DELINQUENCY PROCEEDINGS; TO
 3 AMEND SECTION 83-24-7, MISSISSIPPI CODE OF 1972, TO DEFINE THE
 4 TERM "FEDERAL HOME LOAN BANK"; TO AMEND SECTIONS 83-24-11,
 5 83-24-29, 83-24-41, 83-24-51 AND 83-24-55, MISSISSIPPI CODE OF
 6 1972, TO PROVIDE THAT A FEDERAL HOME LOAN BANK SHALL NOT BE
 7 PROHIBITED FROM EXERCISING OR ENFORCING ANY RIGHT OR CAUSE OF
 8 ACTION REGARDING COLLATERAL PLEDGED UNDER A SECURITY AGREEMENT OR
 9 OTHER SIMILAR AGREEMENT OR ARRANGEMENT TO WHICH SUCH BANK IS A
 10 PARTY; AND FOR RELATED PURPOSES.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

12 **SECTION 1.** (1) Notwithstanding any other provision of this
 13 title, any secured claim that a federal home loan bank has on an
 14 insurer who is subject to a delinquency proceeding under this
 15 chapter is governed exclusively by this section.

16 (2) Notwithstanding any other provision of this title, a
 17 receiver shall not void a redemption or repurchase of any stock or
 18 equity securities made by a federal home loan bank within four (4)
 19 months of the commencement of the delinquency proceedings or that
 20 received prior approval of the receiver. However, a transfer is
 21 voidable if the transfer is made with the actual intent to hinder,



22 delay, or defraud the insurer member, the receiver for the insurer
23 member, existing creditors, or future creditors.

24 (3) If a federal home loan bank exercises its rights
25 regarding collateral pledged by an insurer member who is subject
26 to a delinquency proceeding, then the federal home loan bank shall
27 repurchase any capital stock that is in excess of the amount of
28 federal home loan bank stock that the insurer member is required
29 to hold as a minimum investment, to the extent the federal home
30 loan bank in good faith determines the repurchase to be
31 permissible under applicable laws, regulations, regulatory
32 obligations, and the federal home loan bank's capital plan, and
33 consistent with the federal home loan bank's current capital stock
34 practices applicable to its entire membership.

35 (4) Following the appointment of a receiver for an insurer
36 member, the federal home loan bank, within ten (10) business days
37 after a request made by the receiver, shall provide a process and
38 establish timelines for the:

39 (a) Release of collateral that exceeds the lendable
40 collateral value, as determined pursuant to the advance agreement
41 with the federal home loan bank, required to support secured
42 obligations remaining after any repayment of advances;

43 (b) Release of any of the insurer member's collateral
44 remaining in the federal home loan bank's possession following
45 repayment in full of all outstanding secured obligations of the
46 insurer member;



47 (c) Payment of fees owed by the insurer member and the
48 operation of deposits and other accounts of the insurer member
49 with the federal home loan bank; and

50 (d) Possible redemption or repurchase of federal home
51 loan bank stock or excess stock of any class that an insurer
52 member is required to own.

53 (5) Upon request from the receiver for an insurer member,
54 the federal home loan bank shall provide any available options
55 that an insurer member may exercise to renew or restructure an
56 advance to defer associated prepayment fees, subject to the
57 following:

58 (a) Market conditions;

59 (b) The terms of the advances outstanding to the
60 insurer member;

61 (c) The applicable policies of the federal home loan
62 bank; and

63 (d) Compliance with the Federal Home Loan Bank Act (12
64 USC Section 1421, et seq.) and corresponding regulations.

65 (6) After the tenth day following the commencement of a
66 delinquency proceeding in this state involving an insurer member
67 of the federal home loan bank, the federal home loan bank must not
68 be stayed or prohibited from exercising its rights regarding
69 collateral pledged by that insurer member.

70 **SECTION 2.** Section 83-24-7, Mississippi Code of 1972, is
71 amended as follows:



72 83-24-7. For the purposes of this chapter:

73 (a) "Ancillary state" means any state other than a
74 domiciliary state.

75 (b) "Commissioner" means the Commissioner of Insurance.

76 (c) "Creditor" is a person having any claim, whether
77 matured or unmatured, liquidated or unliquidated, secured or
78 unsecured, absolute, fixed or contingent.

79 (d) "Delinquency proceeding" means any proceeding
80 instituted against an insurer for the purpose of liquidating,
81 rehabilitating, reorganizing or conserving such insurer, and any
82 summary proceeding under Section 83-24-19. "Formal delinquency
83 proceeding" means any liquidation or rehabilitation proceeding.

84 (e) "Doing business" includes any of the following
85 acts, whether effected by mail or otherwise:

86 (i) The issuance or delivery of contracts of
87 insurance to persons residing in this state;

88 (ii) The solicitation of applications for such
89 contracts, or other negotiations preliminary to the execution of
90 such contracts;

91 (iii) The collection of premiums, membership fees,
92 assessments or other consideration for such contracts;

93 (iv) The transaction of matters subsequent to
94 execution of such contracts and arising out of them; or

95 (v) Operating under a license or certificate of
96 authority, as an insurer, issued by the Department of Insurance.



97 (f) "Domiciliary state" means the state in which an
98 insurer is incorporated or organized; or, in the case of an alien
99 insurer, its state of entry.

100 (g) "Fair consideration" is given for property or
101 obligation:

102 (i) When in exchange for such property or
103 obligation, as a fair equivalent therefor, and in good faith,
104 property is conveyed or services are rendered or an obligation is
105 incurred or an antecedent debt is satisfied; or

106 (ii) When such property or obligation is received
107 in good faith to secure a present advance or antecedent debt in
108 amount not disproportionately small as compared to the value of
109 the property or obligation obtained.

110 (h) "Federal home loan bank" means an institution
111 chartered under the Federal Home Loan Bank Act, or its successor
112 statute.

113 (* * * i) "Foreign country" means any other
114 jurisdiction not in any state.

115 (* * * j) "General assets" means all property, real,
116 personal, or otherwise, not specifically mortgaged, pledged,
117 deposited or otherwise encumbered for the security or benefit of
118 specified persons or classes of persons. As to specifically
119 encumbered property, "general assets" includes all such property
120 or its proceeds in excess of the amount necessary to discharge the
121 sum or sums secured thereby. Assets held in trust and on deposit



122 for the security or benefit of all policyholders or all
123 policyholders and creditors, in more than a single state, shall be
124 treated as general assets.

125 (* * *k) "Guaranty association" means the Mississippi
126 Insurance Guaranty Association Law, as amended, the Mississippi
127 Life and Health Insurance Guaranty Association Act, as amended,
128 and any other similar entity now or hereafter created by the
129 Legislature of this state for the payment of claims of insolvent
130 insurers. "Foreign guaranty association" means any similar
131 entities now in existence in or hereafter created by the
132 legislature of any other state.

133 (* * *l) "Insolvency" or "insolvent" means:

134 (i) For an insurer issuing only assessable fire
135 insurance policies:

136 (A) The inability to pay any obligation
137 within thirty (30) days after it becomes payable; or

138 (B) If an assessment be made within thirty
139 (30) days after such date, the inability to pay such obligation
140 thirty (30) days following the date specified in the first
141 assessment notice issued after the date of loss.

142 (ii) For any other insurer, that the insurer is
143 unable to pay its obligations when they are due, or when its
144 admitted assets do not exceed its liabilities plus the greater of:

145 (A) Any capital and surplus required by law
146 for its organization; or



147 (B) The total par or stated value of its
148 authorized and issued capital stock.

149 (iii) As to any insurer licensed to do business in
150 this state as of March 20, 1991, which does not meet the standard
151 established under subparagraph (ii), the term "insolvency" or
152 "insolvent" shall mean for a period not to exceed three (3) years
153 from March 20, 1991, that it is unable to pay its obligations when
154 they are due or that its admitted assets do not exceed its
155 liabilities plus any required capital contribution ordered by the
156 commissioner under provisions of the insurance law.

157 (iv) For purposes of this subsection,
158 "liabilities" shall include, but not be limited to, reserves
159 required by statute or by insurance department general regulations
160 or specific requirements imposed by the commissioner upon a
161 subject company.

162 (* * *m) "Insurer" means any person who has done,
163 purports to do, is doing or is licensed to do an insurance
164 business, and is or has been subject to the authority of, or to
165 liquidation, rehabilitation, reorganization, supervision, or
166 conservation by, any insurance commissioner. For purposes of this
167 chapter, any other persons included under Section 83-24-5 shall be
168 deemed to be insurers.

169 (* * *n) "Preferred claim" means any claim with
170 respect to which the terms of this chapter accord priority of
171 payment from the general assets of the insurer.



172 (* * *o) "Receiver" means receiver, liquidator,
173 rehabilitator or conservator as the context requires.

174 (* * *p) "Reciprocal state" means any state other than
175 this state in which in substance and effect Sections 83-24-35,
176 83-24-103, 83-24-105, 83-24-109, 83-24-111 and 83-24-113 are in
177 force, and in which provisions are in force requiring that the
178 commissioner or equivalent official be the receiver of a
179 delinquent insurer, and in which some provision exists for the
180 avoidance of fraudulent conveyances and preferential transfers.

181 (* * *q) "Secured claim" means any claim secured by
182 mortgage, trust deed, pledge, deposit as security, escrow, or
183 otherwise; but not including special deposit claims or claims
184 against general assets. The term also includes claims which have
185 become liens upon specific assets by reason of judicial process.

186 (* * *r) "Special deposit claim" means any claim
187 secured by a deposit made pursuant to statute for the security or
188 benefit of a limited class or classes of persons, but not
189 including any claim secured by general assets.

190 (* * *s) "State" means any state, district or
191 territory of the United States and the Panama Canal Zone.

192 (* * *t) "Transfer" shall include the sale and every
193 other and different mode, direct or indirect, of disposing of or
194 of parting with property or with an interest therein, or with the
195 possession thereof or of fixing a lien upon property or upon an
196 interest therein, absolutely or conditionally, voluntarily, by or



197 without judicial proceedings. The retention of a security title
198 to property delivered to a debtor shall be deemed a transfer
199 suffered by the debtor.

200 **SECTION 3.** Section 83-24-11, Mississippi Code of 1972, is
201 amended as follows:

202 83-24-11. (1) Any receiver appointed in a proceeding under
203 this chapter may at any time apply for, and any court of general
204 jurisdiction may grant, such restraining orders, preliminary and
205 permanent injunctions, and other orders as may be deemed necessary
206 and proper to prevent:

207 (a) The transaction of further business;

208 (b) The transfer of property;

209 (c) Interference with the receiver or with a proceeding
210 under this chapter;

211 (d) Waste of the insurer's assets;

212 (e) Dissipation and transfer of bank accounts;

213 (f) The institution or further prosecution of any
214 actions or proceedings;

215 (g) The obtaining of preferences, judgments,
216 attachments, garnishments or liens against the insurer, its assets
217 or its policyholders;

218 (h) The levying of execution against the insurer, its
219 assets or its policyholders;



220 (i) The making of any sale or deed for nonpayment of
221 taxes or assessments that would lessen the value of the assets of
222 the insurer;

223 (j) The withholding from the receiver of books,
224 accounts, documents, or other records relating to the business of
225 the insurer; or

226 (k) Any other threatened or contemplated action that
227 might lessen the value of the insurer's assets or prejudice the
228 rights of policyholders, creditors or shareholders, or the
229 administration of any proceeding under this chapter.

230 (2) The receiver may apply to any court outside of the state
231 for the relief described in subsection (1).

232 (3) Notwithstanding subsections (1) and (2) of this section,
233 and any other provision of this title, a federal home loan bank
234 shall not be stayed, enjoined, or prohibited from exercising or
235 enforcing any right or cause of action regarding collateral
236 pledged under a security agreement or under any pledge agreement,
237 collateral agreement, or other similar arrangement or credit
238 enhancement relating to a security agreement to which the federal
239 home loan bank is a party.

240 **SECTION 4.** Section 83-24-29, Mississippi Code of 1972, is
241 amended as follows:

242 83-24-29. (1) Any court in this state before which any
243 action or proceeding is pending in which the insurer is a party or
244 is obligated to defend a party when a rehabilitation order against



245 the insurer is entered, shall stay the action or proceeding for
246 ninety (90) days and such additional time as is necessary for the
247 rehabilitator to obtain proper representation and prepare for
248 further proceedings. The rehabilitator shall take such action
249 respecting the pending litigation as he deems necessary in the
250 interests of justice and for the protection of creditors,
251 policyholders and the public. The rehabilitator shall immediately
252 consider all litigation pending outside this state and shall
253 petition the courts having jurisdiction over that litigation for
254 stays whenever necessary to protect the estate of the insurer.

255 (2) No statute of limitations or defense of laches shall run
256 with respect to any action by or against an insurer between the
257 filing of a petition for appointment of a rehabilitator for that
258 insurer and the order granting or denying that petition. Any
259 action against the insurer that might have been commenced when the
260 petition was filed may be commenced for at least sixty (60) days
261 after the order of rehabilitation is entered or the petition is
262 denied. The rehabilitator may, upon an order for rehabilitation,
263 within one (1) year or such other longer time as applicable law
264 may permit, institute an action or proceeding on behalf of the
265 insurer upon any cause of action against which the period of
266 limitation fixed by applicable law has not expired at the time of
267 the filing of the petition upon which such order is entered.

268 (3) Any guaranty association or foreign guaranty association
269 covering life or health insurance or annuities shall have standing



270 to appear in any court proceeding concerning the rehabilitation of
271 a life or health insurer if such association is or may become
272 liable to act as a result of the rehabilitation.

273 (4) Notwithstanding subsections (1) and (2) of this section,
274 and any other provision of this title, a federal home loan bank
275 shall not be stayed, enjoined, or prohibited from exercising or
276 enforcing any right or cause of action regarding collateral
277 pledged under a security agreement or under any pledge agreement,
278 collateral agreement, or other similar arrangement or credit
279 enhancement relating to a security agreement to which the federal
280 home loan bank is a party.

281 **SECTION 5.** Section 83-24-41, Mississippi Code of 1972, is
282 amended as follows:

283 83-24-41. (1) The liquidator shall have the power:

284 (a) To appoint a special deputy or deputies to act for
285 him under this chapter, and to determine his reasonable
286 compensation. The special deputy shall have all powers of the
287 liquidator granted by this section. The special deputy shall
288 serve at the pleasure of the liquidator.

289 (b) To employ employees and agents, legal counsel,
290 actuaries, accountants, appraisers, consultants and such other
291 personnel as he may deem necessary to assist in the liquidation.

292 (c) To appoint, with the approval of the court, an
293 advisory committee of policyholders, claimants or other creditors
294 including guaranty associations should such a committee be deemed



295 necessary. Such committee shall serve without compensation other
296 than reimbursement for reasonable travel and per diem living
297 expenses. No other committee of any nature shall be appointed by
298 the commissioner or the court in liquidation proceedings conducted
299 under this chapter.

300 (d) To fix the reasonable compensation of employees and
301 agents, legal counsel, actuaries, accountants, appraisers and
302 consultants with the approval of the court.

303 (e) To pay reasonable compensation to persons appointed
304 and to defray from the funds or assets of the insurer all expenses
305 of taking possession of, conserving, conducting, liquidating,
306 disposing of, or otherwise dealing with the business and property
307 of the insurer. In the event that the property of the insurer
308 does not contain sufficient cash or liquid assets to defray the
309 costs incurred, the commissioner may advance the costs so incurred
310 out of any appropriation for the maintenance of the insurance
311 department. Any amounts so advanced for expenses of
312 administration shall be repaid to the commissioner for the use of
313 the insurance department out of the first available monies of the
314 insurer.

315 (f) To hold hearings, to subpoena witnesses to compel
316 their attendance, to administer oaths, to examine any person under
317 oath, and to compel any person to subscribe to his testimony after
318 it has been correctly reduced to writing; and in connection



319 therewith to require the production of any books, papers, records
320 or other documents which he deems relevant to the inquiry.

321 (g) To audit the books and records of all agents of the
322 insurer insofar as those records relate to the business activities
323 of the insurer.

324 (h) To collect all debts and monies due and claims
325 belonging to the insurer, wherever located, and for this purpose:

326 (i) To institute timely action in other
327 jurisdictions in order to forestall garnishment and attachment
328 proceedings against such debts;

329 (ii) To do such other acts as are necessary or
330 expedient to collect, conserve or protect its assets or property,
331 including the power to sell, compound, compromise or assign debts
332 for purposes of collection upon such terms and conditions as he
333 deems best; and

334 (iii) To pursue any creditor's remedies available
335 to enforce his claims.

336 (i) To conduct public and private sales of the property
337 of the insurer.

338 (j) To use assets of the estate of an insurer under a
339 liquidation order to transfer policy obligations to a solvent
340 assuming insurer, if the transfer can be arranged without
341 prejudice to applicable priorities under Section 83-24-83.

342 (k) To acquire, hypothecate, encumber, lease, improve,
343 sell, transfer, abandon or otherwise dispose of or deal with, any



344 property of the insurer at its market value or upon such terms and
345 conditions as are fair and reasonable. He shall also have power
346 to execute, acknowledge and deliver any and all deeds,
347 assignments, releases and other instruments necessary or proper to
348 effectuate any sale of property or other transaction in connection
349 with the liquidation.

350 (l) To borrow money on the security of the insurer's
351 assets or without security and to execute and deliver all
352 documents necessary to that transaction for the purpose of
353 facilitating the liquidation. Any such funds borrowed may be
354 repaid as an administrative expense and have priority over any
355 other claims in Class 1 under the priority of distribution.

356 (m) To enter into such contracts as are necessary to
357 carry out the order to liquidate, and to affirm or disavow any
358 contracts to which the insurer is a party, except that no
359 liquidator shall have the power to disavow, reject or repudiate
360 any pledge agreement, security agreement, collateral agreement, or
361 other similar arrangement or credit enhancement relating to a
362 security agreement to which the federal home loan bank is a party.

363 (n) To continue to prosecute and to institute in the
364 name of the insurer or in his own name any and all suits and other
365 legal proceedings in this state or elsewhere, and to abandon the
366 prosecution of claims he deems unprofitable to pursue further. If
367 the insurer is dissolved under Section 83-24-39, he shall have the



368 power to apply to any court in this state or elsewhere for leave
369 to substitute himself for the insurer as plaintiff.

370 (o) To prosecute any action which may exist in behalf
371 of the creditors, members, policyholders or shareholders of the
372 insurer against any officer of the insurer, or any other person.

373 (p) To remove any or all records and property of the
374 insurer to the offices of the commissioner or to such other place
375 as may be convenient for the purposes of efficient and orderly
376 execution of the liquidation. Guaranty associations and foreign
377 guaranty associations shall have such reasonable access to the
378 records of the insurer as is necessary for them to carry out their
379 statutory obligations.

380 (q) To deposit in one or more banks in this state such
381 sums as are required for meeting current administration expenses
382 and dividend distributions.

383 (r) To invest all sums not currently needed, unless the
384 court orders otherwise.

385 (s) To file any necessary documents for record in the
386 office of any chancery clerk or record office in this state or
387 elsewhere where property of the insurer is located.

388 (t) To assert all defenses available to the insurer as
389 against third persons, including statutes of limitation, statutes
390 of frauds, and the defense of usury. A waiver of any defense by
391 the insurer after a petition in liquidation has been filed shall
392 not bind the liquidator. Whenever a guaranty association or



393 foreign guaranty association has an obligation to defend any suit,
394 the liquidator shall give precedence to such obligation and may
395 defend only in the absence of a defense by such guaranty
396 associations.

397 (u) To exercise and enforce all the rights, remedies
398 and powers of any creditor, shareholder, policyholder or member,
399 including any power to avoid any transfer or lien that may be
400 given by the general law and that is not included with Sections
401 83-24-51 through 83-24-55.

402 (v) To intervene in any proceeding wherever instituted
403 that might lead to the appointment of a receiver or trustee, and
404 to act as the receiver or trustee whenever the appointment is
405 offered.

406 (w) To enter into agreements with any receiver or
407 commissioner of any other state relating to the rehabilitation,
408 liquidation, conservation or dissolution of an insurer doing
409 business in both states.

410 (x) To exercise all powers now held or hereafter
411 conferred upon receivers by the laws of this state not
412 inconsistent with the provisions of this chapter.

413 (2) (a) If a company placed in liquidation issued liability
414 policies on a claims-made basis, which provided an option to
415 purchase an extended period to report claims, then the liquidator
416 may make available to holders of such policies, for a charge, an
417 extended period to report claims as stated herein. The extended



418 reporting period shall be made available only to those insureds
419 who have not secured substitute coverage. The extended period
420 made available by the liquidator shall begin upon termination of
421 any extended period to report claims in the basic policy and shall
422 end at the earlier of the final date for filing of claims in the
423 liquidation proceeding or eighteen (18) months from the order of
424 liquidation.

425 (b) The extended period to report claims made available
426 by the liquidator shall be subject to the terms of the policy to
427 which it relates. The liquidator shall make available such
428 extended period within sixty (60) days after the order of
429 liquidation at a charge to be determined by the liquidator subject
430 to approval of the court. Such offer shall be deemed rejected
431 unless the offer is accepted in writing and the charge is paid
432 within ninety (90) days after the order of liquidation. No
433 commissions, premium taxes, assessments or other fees shall be due
434 on the charge pertaining to the extended period to report claims.

435 (3) The enumeration, in this section, of the powers and
436 authority of the liquidator shall not be construed as a limitation
437 upon him, nor shall it exclude in any manner his right to do such
438 other acts not herein specifically enumerated or otherwise
439 provided for, as may be necessary or appropriate for the
440 accomplishment of or in aid of the purpose of liquidation.

441 (4) Notwithstanding the powers of the liquidator as stated
442 in subsections (1) and (2) above, the liquidator shall have no



443 obligation to defend claims or to continue to defend claims
444 subsequent to the entry of a liquidation order.

445 **SECTION 6.** Section 83-24-51, Mississippi Code of 1972, is
446 amended as follows:

447 83-24-51. (1) Every transfer made or suffered and every
448 obligation incurred by an insurer within one (1) year prior to the
449 filing of a successful petition for rehabilitation or liquidation
450 under this chapter is fraudulent as to then existing and future
451 creditors if made or incurred without fair consideration, or with
452 actual intent to hinder, delay or defraud either existing or
453 future creditors. A transfer made or an obligation incurred by an
454 insurer ordered to be rehabilitated or liquidated under this
455 chapter, which is fraudulent under this section, may be voided by
456 the receiver, except as to a person who in good faith is a
457 purchaser, lienor or obligee for a present fair equivalent value,
458 and except that any purchaser, lienor or obligee, who in good
459 faith has given a consideration less than fair for such transfer,
460 lien or obligation, may retain the property, lien or obligation as
461 security for repayment. The court may, on due notice, order any
462 such transfer or obligation to be preserved for the benefit of the
463 estate, and in that event the receiver shall succeed to and may
464 enforce the rights of the purchaser, lienor or obligee.

465 (2) (a) A transfer of property other than real property
466 shall be deemed to be made or suffered when it becomes so far
467 perfected that no subsequent lien obtainable by legal or equitable



468 proceedings on a simple contract could become superior to the
469 rights of the transferee under Section 83-24-55.

470 (b) A transfer of real property shall be deemed to be
471 made or suffered when it becomes so far perfected that no
472 subsequent bona fide purchaser from the insurer could obtain
473 rights superior to the rights of the transferee.

474 (c) A transfer which creates an equitable lien shall
475 not be deemed to be perfected if there are available means by
476 which a legal lien could be created.

477 (d) Any transfer not perfected prior to the filing of a
478 petition for liquidation shall be deemed to be made immediately
479 before the filing of the successful petition.

480 (e) The provisions of this subsection apply whether or
481 not there are or were creditors who might have obtained any liens
482 or persons who might have become bona fide purchasers.

483 (3) Any transaction of the insurer with a reinsurer shall be
484 deemed fraudulent and may be voided by the receiver under
485 subsection (1) if:

486 (a) The transaction consists of the termination,
487 adjustment or settlement of a reinsurance contract in which the
488 reinsurer is released from any part of its duty to pay the
489 originally specified share of losses that had occurred prior to
490 the time of the transactions, unless the reinsurer gives a present
491 fair equivalent value for the release; and



492 (b) Any part of the transaction took place within one
493 (1) year prior to the date of filing of the petition through which
494 the receivership was commenced.

495 (4) Every person receiving any property from the insurer or
496 any benefit thereof which is a fraudulent transfer under
497 subsection (1) shall be personally liable therefor and shall be
498 bound to account to the liquidator.

499 (5) Notwithstanding this section and any other provision of
500 this title, a receiver shall not avoid any transfer of, or any
501 obligation to transfer, money or any other property arising under
502 or in connection with a federal home loan bank security agreement
503 or any pledge agreement, security agreement, collateral agreement,
504 guarantee agreement, or other similar arrangement or credit
505 enhancement relating to a security agreement to which a federal
506 home loan bank is a party. However, a transfer may be avoided
507 under this section if it was made with the actual intent to
508 hinder, delay, or defraud either existing or future creditors.

509 **SECTION 7.** Section 83-24-55, Mississippi Code of 1972, is
510 amended as follows:

511 83-24-55. (1) (a) A preference is a transfer of any of the
512 property of an insurer to or for the benefit of a creditor, for or
513 on account of an antecedent debt, made or suffered by the insurer
514 within one (1) year before the filing of a successful petition for
515 liquidation under this chapter, the effect of which transfer may
516 be to enable the creditor to obtain a greater percentage of this



517 debt than another creditor of the same class would receive. If a
518 liquidation order is entered while the insurer is already subject
519 to a rehabilitation order, then such transfers shall be deemed
520 preferences if made or suffered within one (1) year before the
521 filing of the successful petition for rehabilitation, or within
522 two (2) years before the filing of the successful petition for
523 liquidation, whichever time is shorter.

524 (b) Any preference may be voided by the liquidator if:

525 (i) The insurer was insolvent at the time of the
526 transfer; or

527 (ii) The transfer was made within four (4) months
528 before the filing of the petition; or

529 (iii) The creditor receiving it or to be benefited
530 thereby or his agent acting with reference thereto had, at the
531 time when the transfer was made, reasonable cause to believe that
532 the insurer was insolvent or was about to become insolvent; or

533 (iv) The creditor receiving it was an officer, or
534 any employee or attorney or other person who was in fact in a
535 position of comparable influence in the insurer to an officer
536 whether or not he held such position, or any shareholder holding,
537 directly or indirectly, more than five percent (5%) of any class
538 of any equity security issued by the insurer, or any other person,
539 firm, corporation, association, or aggregation of persons with
540 whom the insurer did not deal at arm's length.



541 (c) When the preference is voidable, the liquidator may
542 recover the property or, if it has been converted, its value from
543 any person who has received or converted the property; except
544 where a bona fide purchaser or lienor has given less than fair
545 equivalent value, he shall have a lien upon the property to the
546 extent of the consideration actually given by him. If a
547 preference by way of lien or security title is voidable, the court
548 may on due notice order the lien or title to be preserved for the
549 benefit of the estate and the lien or title shall pass to the
550 liquidator.

551 (2) (a) A transfer of property other than real property
552 shall be deemed to be made or suffered when it becomes so far
553 perfected that no subsequent lien obtainable by legal or equitable
554 proceedings on a simple contract could become superior to the
555 rights of the transferee.

556 (b) A transfer of real property shall be deemed to be
557 made or suffered when it becomes so far perfected that no
558 subsequent bona fide purchaser from the insurer could obtain
559 rights superior to the rights of the transferee.

560 (c) A transfer which creates an equitable lien shall
561 not be deemed to be perfected if there are available means by
562 which a legal lien could be created.

563 (d) A transfer not perfected prior to the filing of a
564 petition for liquidation shall be deemed to be made immediately
565 before the filing of the successful petition.



566 (e) The provisions of this subsection apply whether or
567 not there are or were creditors who might have obtained liens or
568 persons who might have become bona fide purchasers.

569 (3) (a) A lien obtainable by legal or equitable proceedings
570 upon a simple contract is one arising in the ordinary course of
571 such proceedings upon the entry or docketing of a judgment or
572 decree, or upon attachment, garnishment, execution, or like
573 process, whether before, upon, or after judgment or decree and
574 whether before or upon levy. It does not include liens which
575 under applicable law are given a special priority over other liens
576 which are prior in time.

577 (b) A lien obtainable by legal or equitable proceedings
578 could become superior to the rights of a transferee, or a
579 purchaser could obtain rights superior to the rights of a
580 transferee within the meaning of subsection (2), if such
581 consequences would follow only from the lien or purchase itself,
582 or from the lien or purchase followed by any step wholly within
583 the control of the respective lienholder or purchaser, with or
584 without the aid of ministerial action by public officials. Such a
585 lien could not, however, become superior and such a purchase could
586 not create superior rights for the purpose of subsection (2)
587 through any acts subsequent to the obtaining of such a lien or
588 subsequent to such a purchase which require the agreement or
589 concurrence of any third party or which require any further
590 judicial action or ruling.



591 (4) A transfer of property for or on account of a new and
592 contemporaneous consideration which is deemed under subsection (2)
593 to be made or suffered after the transfer because of delay in
594 perfecting it does not thereby become a transfer for or on account
595 of an antecedent debt if any acts required by the applicable law
596 to be performed in order to perfect the transfer as against liens
597 or bona fide purchasers' rights are performed within twenty-one
598 (21) days or any period expressly allowed by the law, whichever is
599 less. A transfer to secure a future loan, if such a loan is
600 actually made, or a transfer which becomes security for a future
601 loan, shall have the same effect as a transfer for or on account
602 of a new and contemporaneous consideration.

603 (5) If any lien deemed voidable under subsection (1)(b) has
604 been dissolved by the furnishing of a bond or other obligation,
605 the surety on which has been indemnified directly or indirectly by
606 the transfer of or the creation of a lien upon any property of an
607 insurer before the filing of a petition under this chapter which
608 results in a liquidation order, the indemnifying transfer or lien
609 shall also be deemed voidable.

610 (6) The property affected by any lien deemed voidable under
611 subsections (1) and (5) shall be discharged from such lien, and
612 that property and any of the indemnifying property transferred to
613 or for the benefit of a surety shall pass to the liquidator,
614 except that the court may on due notice order any such lien to be
615 preserved for the benefit of the estate and the court may direct



616 that such conveyance be executed as may be proper or adequate to
617 evidence the title of the liquidator.

618 (7) The court shall have summary jurisdiction of any
619 proceeding by the liquidator to hear and determine the rights of
620 any parties under this section. Reasonable notice of any hearing
621 in the proceeding shall be given to all parties in interest,
622 including the obligee of a releasing bond or other like
623 obligation. When an order is entered for the recovery of
624 indemnifying property in kind or for the avoidance of an
625 indemnifying lien, the court, upon application of any party in
626 interest, shall in the same proceeding ascertain the value of the
627 property or lien, and if the value is less than the amount for
628 which the property is indemnity or than the amount of the lien,
629 the transferee or lienholder may elect to retain the property or
630 lien upon payment of its value, as ascertained by the court, to
631 the liquidator, within such reasonable times as the court shall
632 fix.

633 (8) The liability of the surety under a releasing bond or
634 other like obligation shall be discharged to the extent of the
635 value of the indemnifying property recovered or the indemnifying
636 lien nullified and voided by the liquidator, or where the property
637 is retained under subsection (7) to the extent of the amount paid
638 to the liquidator.

639 (9) If a creditor has been preferred, and afterward in good
640 faith gives the insurer further credit without security of any



641 kind, for property which becomes a part of the insurer's estate,
642 the amount of the new credit remaining unpaid at the time of the
643 petition may be set off against the preference which would
644 otherwise be recoverable from him.

645 (10) If an insurer shall, directly or indirectly, within
646 four (4) months before the filing of a successful petition for
647 liquidation under this chapter, or at any time in contemplation of
648 a proceeding to liquidate it, pay money or transfer property to an
649 attorney-at-law for services rendered or to be rendered, the
650 transactions may be examined by the court on its own motion or
651 shall be examined by the court on petition of the liquidator and
652 shall be held valid only to the extent of a reasonable amount to
653 be determined by the court, and the excess may be recovered by the
654 liquidator for the benefits of the estate. If the attorney is in
655 a position of influence with the insurer or an affiliate thereof,
656 payment of any money or the transfer of any property to the
657 attorney-at-law for services rendered or to be rendered shall be
658 governed by the provision of subsection (1) (b) (iv).

659 (11) (a) Every officer, manager, employee, shareholder,
660 member, subscriber, attorney or any other person acting on behalf
661 of the insurer who knowingly participates in giving any preference
662 when he has reasonable cause to believe the insurer is or is about
663 to become insolvent at the time of the preference shall be
664 personally liable to the liquidator for the amount of the
665 preference. It is permissible to infer that there is a reasonable



666 cause to so believe if the transfer was made within four (4)
667 months before the date of filing of this successful petition for
668 liquidation.

669 (b) Every person receiving any property from the
670 insurer or the benefit thereof as a preference voidable under
671 subsection (1) shall be personally liable therefor and shall be
672 bound to account to the liquidator.

673 (c) Nothing in this subsection shall prejudice any
674 other claim by the liquidator against any person.

675 (12) Notwithstanding subsection (1)(b) of this section and
676 any other provision of this title, a liquidator or rehabilitator
677 shall not avoid any preference arising under or in connection with
678 a federal home loan bank security agreement or any pledge
679 agreement, security agreement, collateral agreement, guarantee
680 agreement, or other similar arrangement or credit enhancement
681 relating to a security agreement to which a federal home loan bank
682 is a party.

683 **SECTION 8.** This act shall take effect and be in force from
684 and after July 1, 2023.

