

By: Senator(s) Michel

To: Insurance

SENATE BILL NO. 2227

1 AN ACT TO AMEND SECTION 83-24-7, MISSISSIPPI CODE OF 1972, TO  
2 DEFINE THE TERM "FEDERAL HOME LOAN BANK"; TO AMEND SECTIONS  
3 83-24-11 AND 83-24-29, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT A  
4 FEDERAL HOME LOAN BANK SHALL NOT BE STAYED, ENJOINED, OR  
5 PROHIBITED FROM EXERCISING OR ENFORCING ANY RIGHT OR CAUSE OF  
6 ACTION REGARDING COLLATERAL PLEDGED UNDER A SECURITY AGREEMENT OR  
7 UNDER ANY PLEDGE AGREEMENT, SECURITY AGREEMENT, COLLATERAL  
8 AGREEMENT OR OTHER SIMILAR ARRANGEMENT OR CREDIT ENHANCEMENT  
9 RELATING TO A SECURITY AGREEMENT TO WHICH THE FEDERAL HOME LOAN  
10 BANK IS A PARTY; TO AMEND SECTION 83-24-41, MISSISSIPPI CODE OF  
11 1972, TO PROVIDE THAT NO LIQUIDATOR SHALL HAVE THE POWER TO  
12 DISAVOW, REJECT OR REPUDIATE ANY PLEDGE AGREEMENT, SECURITY  
13 AGREEMENT, COLLATERAL AGREEMENT OR OTHER SIMILAR AGREEMENT OR  
14 CREDIT ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO WHICH A  
15 FEDERAL HOME LOAN BANK IS A PARTY; TO AMEND SECTION 83-24-51,  
16 MISSISSIPPI CODE OF 1972, TO PROVIDE THAT, EXCEPT FOR IN LIMITED  
17 CIRCUMSTANCES, A RECEIVER SHALL NOT AVOID ANY TRANSFER OF, OR ANY  
18 OBLIGATION TO TRANSFER, MONEY OR ANY OTHER PROPERTY ARISING UNDER  
19 OR IN CONNECTION WITH A FEDERAL HOME LOAN BANK SECURITY AGREEMENT  
20 OR ANY PLEDGE AGREEMENT, SECURITY AGREEMENT, COLLATERAL AGREEMENT,  
21 GUARANTEE AGREEMENT, OR OTHER SIMILAR ARRANGEMENT OR CREDIT  
22 ENHANCEMENT RELATING TO A SECURITY AGREEMENT TO WHICH A FEDERAL  
23 HOME LOAN BANK IS A PARTY; TO AMEND SECTION 83-24-55, MISSISSIPPI  
24 CODE OF 1972, TO PROVIDE THAT A LIQUIDATOR OR REHABILITATOR SHALL  
25 NOT AVOID ANY PREFERENCE ARISING UNDER OR IN CONNECTION WITH A  
26 FEDERAL HOME LOAN BANK SECURITY AGREEMENT OR ANY PLEDGE AGREEMENT,  
27 SECURITY AGREEMENT, COLLATERAL AGREEMENT, GUARANTEE AGREEMENT, OR  
28 OTHER SIMILAR ARRANGEMENT OR CREDIT ENHANCEMENT RELATING TO A  
29 SECURITY AGREEMENT TO WHICH A FEDERAL HOME LOAN BANK IS A PARTY;  
30 TO CREATE NEW SECTION 83-24-119, MISSISSIPPI CODE OF 1972, TO  
31 PROVIDE CERTAIN REQUIREMENTS AND PROCEDURES OF FEDERAL HOME LOAN  
32 BANKS IF THE BANK EXERCISES CERTAIN RIGHTS; AND FOR RELATED  
33 PURPOSES.



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

35 **SECTION 1.** Section 83-24-7, Mississippi Code of 1972, is  
36 amended as follows:

37 83-24-7. For the purposes of this chapter:

38 (a) "Ancillary state" means any state other than a  
39 domiciliary state.

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

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

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

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

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

53 (ii) The solicitation of applications for such  
54 contracts, or other negotiations preliminary to the execution of  
55 such contracts;

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



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

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

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

65 (g) "Fair consideration" is given for property or  
66 obligation:

67 (i) When in exchange for such property or  
68 obligation, as a fair equivalent therefor, and in good faith,  
69 property is conveyed or services are rendered or an obligation is  
70 incurred or an antecedent debt is satisfied; or

71 (ii) When such property or obligation is received  
72 in good faith to secure a present advance or antecedent debt in  
73 amount not disproportionately small as compared to the value of  
74 the property or obligation obtained.

75 (h) "Federal home loan bank" means an institution  
76 chartered under the Federal Home Loan Bank Act (12 USC 1421 et  
77 seq.), as amended, or its successor statute.

78 ( \* \* \*i) "Foreign country" means any other  
79 jurisdiction not in any state.

80 ( \* \* \*j) "General assets" means all property, real,  
81 personal, or otherwise, not specifically mortgaged, pledged,  
82 deposited or otherwise encumbered for the security or benefit of



83 specified persons or classes of persons. As to specifically  
84 encumbered property, "general assets" includes all such property  
85 or its proceeds in excess of the amount necessary to discharge the  
86 sum or sums secured thereby. Assets held in trust and on deposit  
87 for the security or benefit of all policyholders or all  
88 policyholders and creditors, in more than a single state, shall be  
89 treated as general assets.

90 ( \* \* \*k) "Guaranty association" means the Mississippi  
91 Insurance Guaranty Association Law, as amended, the Mississippi  
92 Life and Health Insurance Guaranty Association Act, as amended,  
93 and any other similar entity now or hereafter created by the  
94 Legislature of this state for the payment of claims of insolvent  
95 insurers. "Foreign guaranty association" means any similar  
96 entities now in existence in or hereafter created by the  
97 legislature of any other state.

98 ( \* \* \*l) "Insolvency" or "insolvent" means:

99 (i) For an insurer issuing only assessable fire  
100 insurance policies:

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

103 (B) If an assessment be made within thirty  
104 (30) days after such date, the inability to pay such obligation  
105 thirty (30) days following the date specified in the first  
106 assessment notice issued after the date of loss.



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

110 (A) Any capital and surplus required by law  
111 for its organization; or

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

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

122 (iv) For purposes of this subsection,  
123 "liabilities" shall include, but not be limited to, reserves  
124 required by statute or by insurance department general regulations  
125 or specific requirements imposed by the commissioner upon a  
126 subject company.

127 ( \* \* \*m) "Insurer" means any person who has done,  
128 purports to do, is doing or is licensed to do an insurance  
129 business, and is or has been subject to the authority of, or to  
130 liquidation, rehabilitation, reorganization, supervision, or  
131 conservation by, any insurance commissioner. For purposes of this



132 chapter, any other persons included under Section 83-24-5 shall be  
133 deemed to be insurers.

134 ( \* \* \*n) "Preferred claim" means any claim with  
135 respect to which the terms of this chapter accord priority of  
136 payment from the general assets of the insurer.

137 ( \* \* \*o) "Receiver" means receiver, liquidator,  
138 rehabilitator or conservator as the context requires.

139 ( \* \* \*p) "Reciprocal state" means any state other than  
140 this state in which in substance and effect Sections 83-24-35,  
141 83-24-103, 83-24-105, 83-24-109, 83-24-111 and 83-24-113 are in  
142 force, and in which provisions are in force requiring that the  
143 commissioner or equivalent official be the receiver of a  
144 delinquent insurer, and in which some provision exists for the  
145 avoidance of fraudulent conveyances and preferential transfers.

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

151 ( \* \* \*r) "Special deposit claim" means any claim  
152 secured by a deposit made pursuant to statute for the security or  
153 benefit of a limited class or classes of persons, but not  
154 including any claim secured by general assets.

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



157 ( \* \* \*t) "Transfer" shall include the sale and every  
158 other and different mode, direct or indirect, of disposing of or  
159 of parting with property or with an interest therein, or with the  
160 possession thereof or of fixing a lien upon property or upon an  
161 interest therein, absolutely or conditionally, voluntarily, by or  
162 without judicial proceedings. The retention of a security title  
163 to property delivered to a debtor shall be deemed a transfer  
164 suffered by the debtor.

165 **SECTION 2.** Section 83-24-11, Mississippi Code of 1972, is  
166 amended as follows:

167 83-24-11. (1) Any receiver appointed in a proceeding under  
168 this chapter may at any time apply for, and any court of general  
169 jurisdiction may grant, such restraining orders, preliminary and  
170 permanent injunctions, and other orders as may be deemed necessary  
171 and proper to prevent:

172 (a) The transaction of further business;

173 (b) The transfer of property;

174 (c) Interference with the receiver or with a proceeding  
175 under this chapter;

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

177 (e) Dissipation and transfer of bank accounts;

178 (f) The institution or further prosecution of any  
179 actions or proceedings;



180 (g) The obtaining of preferences, judgments,  
181 attachments, garnishments or liens against the insurer, its assets  
182 or its policyholders;

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

185 (i) The making of any sale or deed for nonpayment of  
186 taxes or assessments that would lessen the value of the assets of  
187 the insurer;

188 (j) The withholding from the receiver of books,  
189 accounts, documents, or other records relating to the business of  
190 the insurer; or

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

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

197 (3) Notwithstanding subsections (1) and (2) of this section  
198 and any other provision of this title, a federal home loan bank  
199 shall not be stayed, enjoined or prohibited from exercising or  
200 enforcing any right or cause of action regarding collateral  
201 pledged under a security agreement or under any pledge agreement,  
202 security agreement, collateral agreement or other similar  
203 arrangement or credit enhancement relating to a security agreement  
204 to which the federal home loan bank is a party.





205           **SECTION 3.** Section 83-24-29, Mississippi Code of 1972, is  
206 amended as follows:

207           83-24-29. (1) Any court in this state before which any  
208 action or proceeding is pending in which the insurer is a party or  
209 is obligated to defend a party when a rehabilitation order against  
210 the insurer is entered, shall stay the action or proceeding for  
211 ninety (90) days and such additional time as is necessary for the  
212 rehabilitator to obtain proper representation and prepare for  
213 further proceedings. The rehabilitator shall take such action  
214 respecting the pending litigation as he deems necessary in the  
215 interests of justice and for the protection of creditors,  
216 policyholders and the public. The rehabilitator shall immediately  
217 consider all litigation pending outside this state and shall  
218 petition the courts having jurisdiction over that litigation for  
219 stays whenever necessary to protect the estate of the insurer.

220           (2) No statute of limitations or defense of laches shall run  
221 with respect to any action by or against an insurer between the  
222 filing of a petition for appointment of a rehabilitator for that  
223 insurer and the order granting or denying that petition. Any  
224 action against the insurer that might have been commenced when the  
225 petition was filed may be commenced for at least sixty (60) days  
226 after the order of rehabilitation is entered or the petition is  
227 denied. The rehabilitator may, upon an order for rehabilitation,  
228 within one (1) year or such other longer time as applicable law  
229 may permit, institute an action or proceeding on behalf of the



230 insurer upon any cause of action against which the period of  
231 limitation fixed by applicable law has not expired at the time of  
232 the filing of the petition upon which such order is entered.

233 (3) Any guaranty association or foreign guaranty association  
234 covering life or health insurance or annuities shall have standing  
235 to appear in any court proceeding concerning the rehabilitation of  
236 a life or health insurer if such association is or may become  
237 liable to act as a result of the rehabilitation.

238 (4) Notwithstanding subsections (1) and (2) of this section  
239 and any other provision of this title, a federal home loan bank  
240 shall not be stayed, enjoined, or prohibited from exercising or  
241 enforcing any right or cause of action regarding collateral  
242 pledged under a security agreement or under any pledge agreement,  
243 security agreement, collateral agreement or other similar  
244 arrangement or credit enhancement relating to a security agreement  
245 to which the federal home loan bank is a party.

246 **SECTION 4.** Section 83-24-41, Mississippi Code of 1972, is  
247 amended as follows:

248 83-24-41. (1) The liquidator shall have the power:

249 (a) To appoint a special deputy or deputies to act for  
250 him under this chapter, and to determine his reasonable  
251 compensation. The special deputy shall have all powers of the  
252 liquidator granted by this section. The special deputy shall  
253 serve at the pleasure of the liquidator.



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

257 (c) To appoint, with the approval of the court, an  
258 advisory committee of policyholders, claimants or other creditors  
259 including guaranty associations should such a committee be deemed  
260 necessary. Such committee shall serve without compensation other  
261 than reimbursement for reasonable travel and per diem living  
262 expenses. No other committee of any nature shall be appointed by  
263 the commissioner or the court in liquidation proceedings conducted  
264 under this chapter.

265 (d) To fix the reasonable compensation of employees and  
266 agents, legal counsel, actuaries, accountants, appraisers and  
267 consultants with the approval of the court.

268 (e) To pay reasonable compensation to persons appointed  
269 and to defray from the funds or assets of the insurer all expenses  
270 of taking possession of, conserving, conducting, liquidating,  
271 disposing of, or otherwise dealing with the business and property  
272 of the insurer. In the event that the property of the insurer  
273 does not contain sufficient cash or liquid assets to defray the  
274 costs incurred, the commissioner may advance the costs so incurred  
275 out of any appropriation for the maintenance of the insurance  
276 department. Any amounts so advanced for expenses of  
277 administration shall be repaid to the commissioner for the use of



278 the insurance department out of the first available monies of the  
279 insurer.

280 (f) To hold hearings, to subpoena witnesses to compel  
281 their attendance, to administer oaths, to examine any person under  
282 oath, and to compel any person to subscribe to his testimony after  
283 it has been correctly reduced to writing; and in connection  
284 therewith to require the production of any books, papers, records  
285 or other documents which he deems relevant to the inquiry.

286 (g) To audit the books and records of all agents of the  
287 insurer insofar as those records relate to the business activities  
288 of the insurer.

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

291 (i) To institute timely action in other  
292 jurisdictions in order to forestall garnishment and attachment  
293 proceedings against such debts;

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

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

301 (i) To conduct public and private sales of the property  
302 of the insurer.



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

307           (k) To acquire, hypothecate, encumber, lease, improve,  
308 sell, transfer, abandon or otherwise dispose of or deal with, any  
309 property of the insurer at its market value or upon such terms and  
310 conditions as are fair and reasonable. He shall also have power  
311 to execute, acknowledge and deliver any and all deeds,  
312 assignments, releases and other instruments necessary or proper to  
313 effectuate any sale of property or other transaction in connection  
314 with the liquidation.

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

321           (m) To enter into such contracts as are necessary to  
322 carry out the order to liquidate, and to affirm or disavow any  
323 contracts to which the insurer is a party, except that no  
324 liquidator shall have the power to disavow, reject or repudiate  
325 any pledge agreement, security agreement, collateral agreement or  
326 other similar agreement or credit enhancement relating to a  
327 security agreement to which a federal home loan bank is a party.



328           (n) To continue to prosecute and to institute in the  
329 name of the insurer or in his own name any and all suits and other  
330 legal proceedings in this state or elsewhere, and to abandon the  
331 prosecution of claims he deems unprofitable to pursue further. If  
332 the insurer is dissolved under Section 83-24-39, he shall have the  
333 power to apply to any court in this state or elsewhere for leave  
334 to substitute himself for the insurer as plaintiff.

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

338           (p) To remove any or all records and property of the  
339 insurer to the offices of the commissioner or to such other place  
340 as may be convenient for the purposes of efficient and orderly  
341 execution of the liquidation. Guaranty associations and foreign  
342 guaranty associations shall have such reasonable access to the  
343 records of the insurer as is necessary for them to carry out their  
344 statutory obligations.

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

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

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



353           (t) To assert all defenses available to the insurer as  
354 against third persons, including statutes of limitation, statutes  
355 of frauds, and the defense of usury. A waiver of any defense by  
356 the insurer after a petition in liquidation has been filed shall  
357 not bind the liquidator. Whenever a guaranty association or  
358 foreign guaranty association has an obligation to defend any suit,  
359 the liquidator shall give precedence to such obligation and may  
360 defend only in the absence of a defense by such guaranty  
361 associations.

362           (u) To exercise and enforce all the rights, remedies  
363 and powers of any creditor, shareholder, policyholder or member,  
364 including any power to avoid any transfer or lien that may be  
365 given by the general law and that is not included with Sections  
366 83-24-51 through 83-24-55.

367           (v) To intervene in any proceeding wherever instituted  
368 that might lead to the appointment of a receiver or trustee, and  
369 to act as the receiver or trustee whenever the appointment is  
370 offered.

371           (w) To enter into agreements with any receiver or  
372 commissioner of any other state relating to the rehabilitation,  
373 liquidation, conservation or dissolution of an insurer doing  
374 business in both states.

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



378           (2)   (a)   If a company placed in liquidation issued liability  
379 policies on a claims-made basis, which provided an option to  
380 purchase an extended period to report claims, then the liquidator  
381 may make available to holders of such policies, for a charge, an  
382 extended period to report claims as stated herein. The extended  
383 reporting period shall be made available only to those insureds  
384 who have not secured substitute coverage. The extended period  
385 made available by the liquidator shall begin upon termination of  
386 any extended period to report claims in the basic policy and shall  
387 end at the earlier of the final date for filing of claims in the  
388 liquidation proceeding or eighteen (18) months from the order of  
389 liquidation.

390           (b)   The extended period to report claims made available  
391 by the liquidator shall be subject to the terms of the policy to  
392 which it relates. The liquidator shall make available such  
393 extended period within sixty (60) days after the order of  
394 liquidation at a charge to be determined by the liquidator subject  
395 to approval of the court. Such offer shall be deemed rejected  
396 unless the offer is accepted in writing and the charge is paid  
397 within ninety (90) days after the order of liquidation. No  
398 commissions, premium taxes, assessments or other fees shall be due  
399 on the charge pertaining to the extended period to report claims.

400           (3)   The enumeration, in this section, of the powers and  
401 authority of the liquidator shall not be construed as a limitation  
402 upon him, nor shall it exclude in any manner his right to do such





403 other acts not herein specifically enumerated or otherwise  
404 provided for, as may be necessary or appropriate for the  
405 accomplishment of or in aid of the purpose of liquidation.

406 (4) Notwithstanding the powers of the liquidator as stated  
407 in subsections (1) and (2) \* \* \* of this section, the liquidator  
408 shall have no obligation to defend claims or to continue to defend  
409 claims subsequent to the entry of a liquidation order.

410 **SECTION 5.** Section 83-24-51, Mississippi Code of 1972, is  
411 amended as follows:

412 83-24-51. (1) Every transfer made or suffered and every  
413 obligation incurred by an insurer within one (1) year prior to the  
414 filing of a successful petition for rehabilitation or liquidation  
415 under this chapter is fraudulent as to then existing and future  
416 creditors if made or incurred without fair consideration, or with  
417 actual intent to hinder, delay or defraud either existing or  
418 future creditors. A transfer made or an obligation incurred by an  
419 insurer ordered to be rehabilitated or liquidated under this  
420 chapter, which is fraudulent under this section, may be voided by  
421 the receiver, except as to a person who in good faith is a  
422 purchaser, lienor or obligee for a present fair equivalent value,  
423 and except that any purchaser, lienor or obligee, who in good  
424 faith has given a consideration less than fair for such transfer,  
425 lien or obligation, may retain the property, lien or obligation as  
426 security for repayment. The court may, on due notice, order any  
427 such transfer or obligation to be preserved for the benefit of the



428 estate, and in that event the receiver shall succeed to and may  
429 enforce the rights of the purchaser, lienor or obligee.

430 (2) (a) A transfer of property other than real property  
431 shall be deemed to be made or suffered when it becomes so far  
432 perfected that no subsequent lien obtainable by legal or equitable  
433 proceedings on a simple contract could become superior to the  
434 rights of the transferee under Section 83-24-55.

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

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

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

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

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

451 (a) The transaction consists of the termination,  
452 adjustment or settlement of a reinsurance contract in which the



453 reinsurer is released from any part of its duty to pay the  
454 originally specified share of losses that had occurred prior to  
455 the time of the transactions, unless the reinsurer gives a present  
456 fair equivalent value for the release; and

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

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

464 (5) Notwithstanding this section and any other provision of  
465 this title, a receiver shall not avoid any transfer of, or any  
466 obligation to transfer, money or any other property arising under  
467 or in connection with a federal home loan bank security agreement  
468 or any pledge agreement, security agreement, collateral agreement,  
469 guarantee agreement, or other similar arrangement or credit  
470 enhancement relating to a security agreement to which a federal  
471 home loan bank is a party. However, a transfer may be avoided  
472 under this section if it was made with the actual intent to  
473 hinder, delay, or defraud either existing or future creditors.

474 **SECTION 6.** Section 83-24-55, Mississippi Code of 1972, is  
475 amended as follows:

476 83-24-55. (1) (a) A preference is a transfer of any of the  
477 property of an insurer to or for the benefit of a creditor, for or



478 on account of an antecedent debt, made or suffered by the insurer  
479 within one (1) year before the filing of a successful petition for  
480 liquidation under this chapter, the effect of which transfer may  
481 be to enable the creditor to obtain a greater percentage of this  
482 debt than another creditor of the same class would receive. If a  
483 liquidation order is entered while the insurer is already subject  
484 to a rehabilitation order, then such transfers shall be deemed  
485 preferences if made or suffered within one (1) year before the  
486 filing of the successful petition for rehabilitation, or within  
487 two (2) years before the filing of the successful petition for  
488 liquidation, whichever time is shorter.

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

490 (i) The insurer was insolvent at the time of the  
491 transfer; or

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

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

498 (iv) The creditor receiving it was an officer, or  
499 any employee or attorney or other person who was in fact in a  
500 position of comparable influence in the insurer to an officer  
501 whether or not he held such position, or any shareholder holding,  
502 directly or indirectly, more than five percent (5%) of any class



503 of any equity security issued by the insurer, or any other person,  
504 firm, corporation, association, or aggregation of persons with  
505 whom the insurer did not deal at arm's length.

506 (c) When the preference is voidable, the liquidator may  
507 recover the property or, if it has been converted, its value from  
508 any person who has received or converted the property; except  
509 where a bona fide purchaser or lienor has given less than fair  
510 equivalent value, he shall have a lien upon the property to the  
511 extent of the consideration actually given by him. If a  
512 preference by way of lien or security title is voidable, the court  
513 may on due notice order the lien or title to be preserved for the  
514 benefit of the estate and the lien or title shall pass to the  
515 liquidator.

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

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

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



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

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

534 (3) (a) A lien obtainable by legal or equitable proceedings  
535 upon a simple contract is one arising in the ordinary course of  
536 such proceedings upon the entry or docketing of a judgment or  
537 decree, or upon attachment, garnishment, execution, or like  
538 process, whether before, upon, or after judgment or decree and  
539 whether before or upon levy. It does not include liens which  
540 under applicable law are given a special priority over other liens  
541 which are prior in time.

542 (b) A lien obtainable by legal or equitable proceedings  
543 could become superior to the rights of a transferee, or a  
544 purchaser could obtain rights superior to the rights of a  
545 transferee within the meaning of subsection (2), if such  
546 consequences would follow only from the lien or purchase itself,  
547 or from the lien or purchase followed by any step wholly within  
548 the control of the respective lienholder or purchaser, with or  
549 without the aid of ministerial action by public officials. Such a  
550 lien could not, however, become superior and such a purchase could  
551 not create superior rights for the purpose of subsection (2)  
552 through any acts subsequent to the obtaining of such a lien or



553 subsequent to such a purchase which require the agreement or  
554 concurrence of any third party or which require any further  
555 judicial action or ruling.

556 (4) A transfer of property for or on account of a new and  
557 contemporaneous consideration which is deemed under subsection (2)  
558 to be made or suffered after the transfer because of delay in  
559 perfecting it does not thereby become a transfer for or on account  
560 of an antecedent debt if any acts required by the applicable law  
561 to be performed in order to perfect the transfer as against liens  
562 or bona fide purchasers' rights are performed within twenty-one  
563 (21) days or any period expressly allowed by the law, whichever is  
564 less. A transfer to secure a future loan, if such a loan is  
565 actually made, or a transfer which becomes security for a future  
566 loan, shall have the same effect as a transfer for or on account  
567 of a new and contemporaneous consideration.

568 (5) If any lien deemed voidable under subsection (1)(b) has  
569 been dissolved by the furnishing of a bond or other obligation,  
570 the surety on which has been indemnified directly or indirectly by  
571 the transfer of or the creation of a lien upon any property of an  
572 insurer before the filing of a petition under this chapter which  
573 results in a liquidation order, the indemnifying transfer or lien  
574 shall also be deemed voidable.

575 (6) The property affected by any lien deemed voidable under  
576 subsections (1) and (5) shall be discharged from such lien, and  
577 that property and any of the indemnifying property transferred to



578 or for the benefit of a surety shall pass to the liquidator,  
579 except that the court may on due notice order any such lien to be  
580 preserved for the benefit of the estate and the court may direct  
581 that such conveyance be executed as may be proper or adequate to  
582 evidence the title of the liquidator.

583 (7) The court shall have summary jurisdiction of any  
584 proceeding by the liquidator to hear and determine the rights of  
585 any parties under this section. Reasonable notice of any hearing  
586 in the proceeding shall be given to all parties in interest,  
587 including the obligee of a releasing bond or other like  
588 obligation. When an order is entered for the recovery of  
589 indemnifying property in kind or for the avoidance of an  
590 indemnifying lien, the court, upon application of any party in  
591 interest, shall in the same proceeding ascertain the value of the  
592 property or lien, and if the value is less than the amount for  
593 which the property is indemnity or than the amount of the lien,  
594 the transferee or lienholder may elect to retain the property or  
595 lien upon payment of its value, as ascertained by the court, to  
596 the liquidator, within such reasonable times as the court shall  
597 fix.

598 (8) The liability of the surety under a releasing bond or  
599 other like obligation shall be discharged to the extent of the  
600 value of the indemnifying property recovered or the indemnifying  
601 lien nullified and voided by the liquidator, or where the property





602 is retained under subsection (7) to the extent of the amount paid  
603 to the liquidator.

604 (9) If a creditor has been preferred, and afterward in good  
605 faith gives the insurer further credit without security of any  
606 kind, for property which becomes a part of the insurer's estate,  
607 the amount of the new credit remaining unpaid at the time of the  
608 petition may be set off against the preference which would  
609 otherwise be recoverable from him.

610 (10) If an insurer shall, directly or indirectly, within  
611 four (4) months before the filing of a successful petition for  
612 liquidation under this chapter, or at any time in contemplation of  
613 a proceeding to liquidate it, pay money or transfer property to an  
614 attorney-at-law for services rendered or to be rendered, the  
615 transactions may be examined by the court on its own motion or  
616 shall be examined by the court on petition of the liquidator and  
617 shall be held valid only to the extent of a reasonable amount to  
618 be determined by the court, and the excess may be recovered by the  
619 liquidator for the benefits of the estate. If the attorney is in  
620 a position of influence with the insurer or an affiliate thereof,  
621 payment of any money or the transfer of any property to the  
622 attorney-at-law for services rendered or to be rendered shall be  
623 governed by the provision of subsection (1)(b)(iv).

624 (11) (a) Every officer, manager, employee, shareholder,  
625 member, subscriber, attorney or any other person acting on behalf  
626 of the insurer who knowingly participates in giving any preference



627 when he has reasonable cause to believe the insurer is or is about  
628 to become insolvent at the time of the preference shall be  
629 personally liable to the liquidator for the amount of the  
630 preference. It is permissible to infer that there is a reasonable  
631 cause to so believe if the transfer was made within four (4)  
632 months before the date of filing of this successful petition for  
633 liquidation.

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

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

640 (12) Notwithstanding subsection (1)(b) of this section and  
641 any other provision of this title, a liquidator or rehabilitator  
642 shall not avoid any preference arising under or in connection with  
643 a federal home loan bank security agreement or any pledge  
644 agreement, security agreement, collateral agreement, guarantee  
645 agreement, or other similar arrangement or credit enhancement  
646 relating to a security agreement to which a federal home loan bank  
647 is a party.

648 **SECTION 7.** The following shall be codified as Section  
649 83-24-119, Mississippi Code of 1972:

650 83-24-119. (1) Notwithstanding any other provision of this  
651 title, any secured claim that a federal home loan bank has on an



652 insurer who is subject to a delinquency proceeding under this  
653 chapter is governed exclusively by this section.

654 (2) Notwithstanding any other provision of this title, a  
655 receiver shall not void a redemption or repurchase of any stock or  
656 equity securities made by a federal home loan bank within four (4)  
657 months of the commencement of the delinquency proceedings or that  
658 received prior approval of the receiver. However, a transfer is  
659 voidable if the transfer is made with the actual intent to hinder,  
660 delay, or defraud the insurer member, the receiver for the insurer  
661 member, existing creditors or future creditors.

662 (3) If a federal home loan bank exercises its rights  
663 regarding collateral pledged by an insurer member who is subject  
664 to a delinquency proceeding, then the federal home loan bank shall  
665 repurchase any capital stock that is in excess of the amount of  
666 federal home loan bank stock that the insurer member is required  
667 to hold as a minimum investment, to the extent the federal home  
668 loan bank in good faith determines the repurchase to be  
669 permissible under applicable laws, regulations, regulatory  
670 obligations, and the federal home loan bank's capital plan, and  
671 consistent with the federal home loan bank's current capital stock  
672 practices applicable to its entire membership.

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



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

681 (b) Release of any of the insurer member's collateral  
682 remaining in the federal home loan bank's possession following  
683 repayment in full of all outstanding secured obligations of the  
684 insurer member;

685 (c) Payment of fees owed by the insurer member and the  
686 operation of deposits and other accounts of the insurer member  
687 with the federal home loan bank; and

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

691 (5) Upon request from the receiver for an insurer member,  
692 the federal home loan bank shall provide any available options  
693 that an insurer member may exercise to renew or restructure an  
694 advance to defer associated prepayment fees, subject to the  
695 following:

696 (a) Market conditions;

697 (b) The terms of the advances outstanding to the  
698 insurer member;

699 (c) The applicable policies of the federal home loan  
700 bank; and



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

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

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

