

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.

