

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 337

Introduced by Schumacher, 22.

Read first time January 17, 2013

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-4805, 44-4815,
2 44-4821, 44-4826, 44-4827, and 44-4828, Reissue Revised
3 Statutes of Nebraska; to change provisions of the
4 Nebraska Insurers Supervision, Rehabilitation, and
5 Liquidation Act relating to security arrangements
6 involving a Federal Home Loan Bank; to repeal the
7 original sections; and to declare an emergency.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-4805, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-4805 (1) ~~Any~~ Except as provided in subsection (3) of
4 this section, any receiver appointed in a proceeding under the
5 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act
6 may at any time apply for, and the court may grant, such restraining
7 orders, preliminary and permanent injunctions, and other orders as
8 may be deemed necessary and proper to prevent:

- 9 (a) The transaction of further business;
- 10 (b) The transfer of property;
- 11 (c) Interference with the receiver or with a proceeding
12 under the act;
- 13 (d) Waste of the insurer's assets;
- 14 (e) Dissipation and transfer of bank accounts;
- 15 (f) The institution or further prosecution of any actions
16 or proceedings;
- 17 (g) The obtaining of preferences, judgments, attachments,
18 garnishments, or liens against the insurer, its assets, or its
19 insureds;
- 20 (h) The levying of execution against the insurer, its
21 assets, or its insureds;
- 22 (i) The making of any sale or deed for nonpayment of
23 taxes or assessments that would lessen the value of the assets of the
24 insurer;
- 25 (j) The withholding from the receiver of books, accounts,

1 documents, or other records relating to the business of the insurer;
2 or

3 (k) Any other threatened or contemplated action that
4 might lessen the value of the insurer's assets or prejudice the
5 rights of insureds, creditors, or shareholders or the administration
6 of any proceeding under the act.

7 (2) ~~The~~ Except as provided in subsection (3) of this
8 section, the receiver may apply to any court outside of the state for
9 the relief described in subsection (1) of this section.

10 (3) A Federal Home Loan Bank and any other person shall
11 not be stayed, enjoined, or prohibited from exercising or enforcing
12 any right or cause of action under any pledge, security, credit,
13 collateral, loan, advance, reimbursement or guarantee agreement or
14 arrangement, or similar agreement, arrangement, or other credit
15 enhancement to which a Federal Home Loan Bank is a party.

16 Sec. 2. Section 44-4815, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-4815 (1) ~~Any~~ Except as provided in subsection (4) of
19 this section, any court in this state before which any action or
20 proceeding in which the insurer is a party or is obligated to defend
21 a party is pending when a rehabilitation order against the insurer is
22 entered shall stay the action or proceeding for ninety days and such
23 additional time as is necessary for the rehabilitator to obtain
24 proper representation and prepare for further proceedings. The
25 rehabilitator shall take such action respecting the pending

1 litigation as he or she deems necessary in the interests of justice
2 and for the protection of insureds, creditors, and the public. The
3 rehabilitator shall immediately consider all litigation pending
4 outside this state and shall petition the courts having jurisdiction
5 over that litigation for stays whenever necessary to protect the
6 estate of the insurer.

7 (2) No statute of limitations or defense of laches shall
8 run with respect to any action by or against an insurer between the
9 filing of a petition for appointment of a rehabilitator for that
10 insurer and the order granting or denying that petition. Any action
11 by or against the insurer that might have been commenced when the
12 petition was filed may be commenced for at least sixty days after the
13 order of rehabilitation is entered or the petition is denied. The
14 rehabilitator may, upon an order for rehabilitation, within one year
15 or such other longer time as applicable law may permit, institute an
16 action or proceeding on behalf of the insurer upon any cause of
17 action against which the period of limitation fixed by applicable law
18 has not expired at the time of the filing of the petition upon which
19 such order is entered.

20 (3) Any guaranty association or foreign guaranty
21 association covering life or health insurance or annuities shall have
22 standing to appear in any court proceeding concerning the
23 rehabilitation of a life or health insurer if such association is or
24 may become liable to act as a result of the rehabilitation.

25 (4) A Federal Home Loan Bank and any other person shall

1 not be stayed, enjoined, or prohibited from exercising or enforcing
2 any right or cause of action under any pledge, security, credit,
3 collateral, loan, advance, reimbursement or guarantee agreement or
4 arrangement, or similar agreement, arrangement, or other credit
5 enhancement to which a Federal Home Loan Bank is a party.

6 Sec. 3. Section 44-4821, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 44-4821 (1) The liquidator shall have the power:

9 (a) To appoint a special deputy to act for him or her
10 under the Nebraska Insurers Supervision, Rehabilitation, and
11 Liquidation Act and to determine his or her reasonable compensation.
12 The special deputy shall have all powers of the liquidator granted by
13 this section. The special deputy shall serve at the pleasure of the
14 liquidator;

15 (b) To employ employees, agents, legal counsel,
16 actuaries, accountants, appraisers, consultants, and such other
17 personnel as he or she may deem necessary to assist in the
18 liquidation;

19 (c) To appoint, with the approval of the court, an
20 advisory committee of policyholders, claimants, or other creditors,
21 including guaranty associations, should such a committee be deemed
22 necessary. Such committee shall serve without compensation other than
23 reimbursement for reasonable travel and per diem living expenses. No
24 other committee of any nature shall be appointed by the director or
25 the court in liquidation proceedings conducted under the act;

1 (d) To fix the reasonable compensation of employees,
2 agents, legal counsel, actuaries, accountants, appraisers, and
3 consultants with the approval of the court;

4 (e) To pay reasonable compensation to persons appointed
5 and to defray from the funds or assets of the insurer all expenses of
6 taking possession of, conserving, conducting, liquidating, disposing
7 of, or otherwise dealing with the business and property of the
8 insurer;

9 (f) To hold hearings, to subpoena witnesses, to compel
10 their attendance, to administer oaths and affirmations, to examine
11 any person under oath or affirmation, and to compel any person to
12 subscribe to his or her testimony after it has been correctly reduced
13 to writing and, in connection therewith, to require the production of
14 any books, papers, records, or other documents which he or she deems
15 relevant to the inquiry;

16 (g) To audit the books and records of all agents of the
17 insurer insofar as those records relate to the business activities of
18 the insurer;

19 (h) To collect all debts and money due and claims
20 belonging to the insurer, wherever located, and for this purpose:

21 (i) To institute timely action in other jurisdictions, in
22 order to forestall garnishment and attachment proceedings against
23 such debts;

24 (ii) To do such other acts as are necessary or expedient
25 to collect, conserve, or protect its assets or property, including

1 the power to sell, compound, compromise, or assign debts for purposes
2 of collection upon such terms and conditions as he or she deems best;
3 and

4 (iii) To pursue any creditor's remedies available to
5 enforce his or her claims;

6 (i) To conduct public and private sales of the property
7 of the insurer;

8 (j) To use assets of the estate of an insurer under a
9 liquidation order to transfer policy obligations to a solvent
10 assuming insurer if the transfer can be arranged without prejudice to
11 applicable priorities under section 44-4842;

12 (k) To acquire, hypothecate, encumber, lease, improve,
13 sell, transfer, abandon, or otherwise dispose of or deal with any
14 property of the insurer at its market value or upon such terms and
15 conditions as are fair and reasonable. He or she shall also have
16 power to execute, acknowledge, and deliver any and all deeds,
17 assignments, releases, and other instruments necessary or proper to
18 effectuate any sale of property or other transaction in connection
19 with the liquidation;

20 (l) To borrow money on the security of the insurer's
21 assets or without security and to execute and deliver all documents
22 necessary to that transaction for the purpose of facilitating the
23 liquidation. Any such funds borrowed may be repaid as an
24 administrative expense and shall have priority over any other claims
25 under subdivision (1) of section 44-4842;

1 (m) To enter into such contracts as are necessary to
2 carry out the order to liquidate and to affirm or disavow any
3 contracts to which the insurer is a party, except that a liquidator
4 shall not have power to disavow, reject, or repudiate any pledge,
5 security, credit, collateral, loan, advance, reimbursement or
6 guarantee agreement or arrangement, or similar agreement,
7 arrangement, or other credit enhancement to which a Federal Home Loan
8 Bank is a party;

9 (n) To continue to prosecute and to institute in the name
10 of the insurer or in his or her own name any and all suits and other
11 legal proceedings in this state or elsewhere and to abandon the
12 prosecution of claims he or she deems unprofitable to pursue further.
13 If the insurer is dissolved under section 44-4820, the liquidator
14 shall have the power to apply to any court in this state or elsewhere
15 for leave to substitute himself or herself for the insurer as
16 plaintiff;

17 (o) To prosecute any action which may exist on behalf of
18 the insureds, creditors, members, or shareholders of the insurer
19 against any officer of the insurer or any other person;

20 (p) To remove any or all records and property of the
21 insurer to the offices of the director or to such other place as may
22 be convenient for the purposes of efficient and orderly execution of
23 the liquidation. Guaranty associations and foreign guaranty
24 associations shall have such reasonable access to the records of the
25 insurer as is necessary for them to carry out their statutory

1 obligations;

2 (q) To deposit in one or more banks in this state such
3 sums as are required for meeting current administration expenses and
4 dividend distributions;

5 (r) To invest all sums not currently needed unless the
6 court orders otherwise;

7 (s) To file any necessary documents for record in the
8 office of any register of deeds or record office in this state or
9 elsewhere where property of the insurer is located;

10 (t) To assert all defenses available to the insurer as
11 against third persons, including statutes of limitations, statutes of
12 frauds, and the defense of usury. A waiver of any defense by the
13 insurer after a petition in liquidation has been filed shall not bind
14 the liquidator. Whenever a guaranty association or foreign guaranty
15 association has an obligation to defend any suit, the liquidator
16 shall give precedence to such obligation and may defend only in the
17 absence of a defense by such guaranty associations;

18 (u) To exercise and enforce all the rights, remedies, and
19 powers of any insured, creditor, shareholder, or member, including
20 any power to avoid any transfer or lien that may be given by the
21 general law and that is not included with sections 44-4826 to
22 44-4828, except that a liquidator shall not have power to disavow,
23 reject, or repudiate any pledge, security, credit, collateral, loan,
24 advance, reimbursement or guarantee agreement or arrangement, or
25 similar agreement, arrangement, or other credit enhancement to which

1 a Federal Home Loan Bank is a party;

2 (v) To intervene in any proceeding wherever instituted
3 that might lead to the appointment of a receiver or trustee and to
4 act as the receiver or trustee whenever the appointment is offered;

5 (w) To enter into agreements with any receiver or the
6 director, commissioner, or equivalent official of any other state
7 relating to the rehabilitation, liquidation, conservation, or
8 dissolution of an insurer doing business in both states; and

9 (x) To exercise all powers now held or hereafter
10 conferred upon receivers by the laws of this state not inconsistent
11 with the provisions of the act.

12 (2)(a) If a company placed in liquidation has issued
13 liability policies on a claims-made basis, which policies provided an
14 option to purchase an extended period to report claims, then the
15 liquidator may make available to holders of such policies, for a
16 charge, an extended period to report claims as stated in this
17 subsection. The extended reporting period shall be made available
18 only to those insureds who have not secured substitute coverage. The
19 extended period made available by the liquidator shall begin upon
20 termination of any extended period to report claims in the basic
21 policy and shall end at the earlier of the final date for filing of
22 claims in the liquidation proceeding or eighteen months from the
23 order of liquidation.

24 (b) The extended period to report claims made available
25 by the liquidator shall be subject to the terms of the policy to

1 which it relates. The liquidator shall make available such extended
2 period within sixty days after the order of liquidation at a charge
3 to be determined by the liquidator subject to approval of the court.
4 Such offer shall be deemed rejected unless the offer is accepted in
5 writing and the charge is paid within ninety days after the order of
6 liquidation. No commissions, premium taxes, assessments, or other
7 fees shall be due on the charge pertaining to the extended period to
8 report claims.

9 (3) The enumeration in this section of the powers and
10 authority of the liquidator shall not be construed as a limitation
11 upon him or her nor shall it exclude in any manner his or her right
12 to do such other acts not in this section specifically enumerated or
13 otherwise provided for as may be necessary or appropriate for the
14 accomplishment of or in aid of the purpose of liquidation.

15 (4) Notwithstanding the powers of the liquidator as
16 stated in subsections (1) and (2) of this section, the liquidator
17 shall have no obligation to defend claims or to continue to defend
18 claims subsequent to the entry of a liquidation order.

19 Sec. 4. Section 44-4826, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-4826 (1) Every transfer made or suffered and every
22 obligation incurred by an insurer within one year prior to the filing
23 of a successful petition for rehabilitation or liquidation under the
24 Nebraska Insurers Supervision, Rehabilitation, and Liquidation Act
25 shall be fraudulent as to then existing and future creditors if made

1 or incurred without fair consideration or with actual intent to
2 hinder, delay, or defraud either existing or future creditors. A
3 Except as provided in subsection (5) of this section, a transfer made
4 or an obligation incurred by an insurer ordered to be rehabilitated
5 or liquidated under the act which is fraudulent under this section
6 may be avoided by the receiver, except as to a person who in good
7 faith is a purchaser, lienor, or obligee for a present fair
8 equivalent value, and except that any purchaser, lienor, or obligee
9 who in good faith has given a consideration less than fair for such
10 transfer, lien, or obligation may retain the property, lien, or
11 obligation as security for repayment. The court may, on due notice,
12 order any such transfer or obligation to be preserved for the benefit
13 of the estate, and in that event, the receiver shall succeed to and
14 may enforce the rights of the purchaser, lienor, or obligee.

15 (2)(a) A transfer of property other than real property
16 shall be deemed to be made or suffered when it becomes so far
17 perfected that no subsequent lien obtainable by legal or equitable
18 proceedings on a simple contract could become superior to the rights
19 of the transferee under subsection (3) of section 44-4828.

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

24 (c) A transfer which creates an equitable lien shall not
25 be deemed to be perfected if there are available means by which a

1 legal lien could be created.

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

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

8 (3) ~~Any~~ Except as provided in subsection (5) of this
9 section, any transaction of the insurer with a reinsurer shall be
10 deemed fraudulent and may be avoided by the receiver under subsection
11 (1) of this section if:

12 (a) The transaction consists of the termination,
13 adjustment, or settlement of a reinsurance contract in which the
14 reinsurer is released from any part of its duty to pay the originally
15 specified share of losses that had occurred prior to the time of the
16 transactions unless the reinsurer gives a present fair equivalent
17 value for the release; and

18 (b) Any part of the transaction took place within one
19 year prior to the date of filing of the petition through which the
20 receivership was commenced.

21 (4) Every person receiving any property from the insurer
22 or any benefit thereof which is a fraudulent transfer under
23 subsection (1) of this section shall be personally liable therefor
24 and shall be bound to account to the liquidator.

25 (5) A receiver or other person may not avoid any transfer

1 of, or any obligation to transfer, money or any other property
2 arising under or in connection with any pledge, security, credit,
3 collateral, loan, advance, reimbursement or guarantee agreement or
4 arrangement, or similar agreement, arrangement, or other credit
5 enhancement to which a Federal Home Loan Bank is a party and that is
6 made, incurred, or assumed prior to or after the filing of a petition
7 for rehabilitation or liquidation or would otherwise be subject to
8 avoidance under this section. A transfer may be avoided under this
9 subsection if it was made with actual intent to hinder, delay, or
10 defraud either existing or future creditors.

11 Sec. 5. Section 44-4827, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 44-4827 (1) After a petition for rehabilitation or
14 liquidation has been filed, a transfer of any of the real property of
15 the insurer made to a person acting in good faith shall be valid
16 against the receiver if made for a present fair equivalent value or,
17 if not made for a present fair equivalent value, then to the extent
18 of the present consideration actually paid therefor, for which amount
19 the transferee shall have a lien on the property so transferred. The
20 commencement of a proceeding in rehabilitation or liquidation shall
21 be constructive notice upon the recording of a copy of the petition
22 for or order of rehabilitation or liquidation with the register of
23 deeds in the county where any real property in question is located.
24 The exercise by a court of the United States or any state or
25 jurisdiction to authorize or effect a judicial sale of real property

1 of the insurer within any county in any state shall not be impaired
2 by the pendency of such a proceeding unless the copy is recorded in
3 the county prior to the consummation of the judicial sale.

4 (2) After a petition for rehabilitation or liquidation
5 has been filed and before either the receiver takes possession of the
6 property of the insurer or an order of rehabilitation or liquidation
7 is granted:

8 (a) A transfer of any of the property of the insurer,
9 other than real property, made to a person acting in good faith shall
10 be valid against the receiver if made for a present fair equivalent
11 value or, if not made for a present fair equivalent value, then to
12 the extent of the present consideration actually paid therefor, for
13 which amount the transferee shall have a lien on the property so
14 transferred;

15 (b) A person indebted to the insurer or holding property
16 of the insurer may, if acting in good faith, pay the indebtedness or
17 deliver the property or any part thereof to the insurer or upon his
18 or her order with the same effect as if the petition were not
19 pending;

20 (c) A person having actual knowledge of the pending
21 rehabilitation or liquidation shall be deemed not to act in good
22 faith; and

23 (d) A person asserting the validity of a transfer under
24 this section shall have the burden of proof. Except as elsewhere
25 provided in this section, no transfer by or on behalf of the insurer

1 after the date of the petition for liquidation by any person other
2 than the liquidator shall be valid against the liquidator.

3 (3) Every person receiving any property from the insurer
4 or any benefit thereof which is a fraudulent transfer under
5 subsection (1) of this section shall be liable therefor and shall be
6 bound to account to the liquidator.

7 (4) Nothing in the Nebraska Insurers Supervision,
8 Rehabilitation, and Liquidation Act shall impair the negotiability of
9 currency or negotiable instruments.

10 (5) A receiver or other person may not avoid any transfer
11 of, or any obligation to transfer, money or any other property
12 arising under or in connection with any pledge, security, credit,
13 collateral, loan, advance, reimbursement or guarantee agreement or
14 arrangement, or similar agreement, arrangement, or other credit
15 enhancement to which a Federal Home Loan Bank is a party and that is
16 made, incurred, or assumed prior to or after the filing of a petition
17 for rehabilitation or liquidation or would otherwise be subject to
18 avoidance under this section. A transfer may be avoided under this
19 subsection if it was made with actual intent to hinder, delay, or
20 defraud either existing or future creditors.

21 Sec. 6. Section 44-4828, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 44-4828 (1)(a) A preference shall mean a transfer of any
24 of the property of an insurer to or for the benefit of a creditor,
25 for or on account of an antecedent debt, made or suffered by the

1 insurer within one year before the filing of a successful petition
2 for liquidation under the Nebraska Insurers Supervision,
3 Rehabilitation, and Liquidation Act the effect of which transfer may
4 be to enable the creditor to obtain a greater percentage of such debt
5 than another creditor of the same class would receive. If a
6 liquidation order is entered while the insurer is already subject to
7 a rehabilitation order, such transfers shall be deemed preferences if
8 made or suffered within one year before the filing of the successful
9 petition for rehabilitation or within two years before the filing of
10 the successful petition for liquidation, whichever time is shorter.

11 (b) ~~Any~~ Except as provided in subdivision (1)(d) of this
12 section, any preference may be avoided by the liquidator if:

13 (i) The insurer was insolvent at the time of the
14 transfer;

15 (ii) The transfer was made within four months before the
16 filing of the petition;

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

21 (iv) The creditor receiving it was: An officer; any
22 employee, attorney, or other person who was in fact in a position of
23 comparable influence in the insurer to an officer whether or not he
24 or she held such position; any shareholder holding directly or
25 indirectly more than five percent of any class of any equity security

1 issued by the insurer; or any other person, firm, corporation,
2 association, or aggregation of persons with whom the insurer did not
3 deal at arm's length.

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

14 (d) A liquidator or other person shall not avoid any
15 preference arising under or in connection with any pledge, security,
16 credit, collateral, loan, advance, reimbursement or guarantee
17 agreement or arrangement, or similar agreement, arrangement, or other
18 credit enhancement to which a Federal Home Loan Bank is a party.

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

24 (b) A transfer of real property shall be deemed to be
25 made or suffered when it becomes so far perfected that no subsequent

1 bona fide purchaser from the insurer could obtain rights superior to
2 the rights of the transferee.

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

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

9 (e) The provisions of this subsection shall apply whether
10 or not there are or were creditors who might have obtained liens or
11 persons who might have become bona fide purchasers.

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

20 (b) A lien obtainable by legal or equitable proceedings
21 could become superior to the rights of a transferee or a purchaser
22 could obtain rights superior to the rights of a transferee within the
23 meaning of subsection (2) of this section if such consequences would
24 follow only from the lien or purchase itself or from the lien or
25 purchase followed by any step wholly within the control of the

1 respective lienholder or purchaser with or without the aid of
2 ministerial action by public officials. Such a lien could not,
3 however, become superior and such a purchase could not create
4 superior rights for the purpose of subsection (2) of this section
5 through any acts subsequent to the obtaining of such a lien or
6 subsequent to such a purchase which require the agreement or
7 concurrence of any third party or which require any further judicial
8 action or ruling.

9 (4) A transfer of property for or on account of a new and
10 contemporaneous consideration which is deemed under subsection (2) of
11 this section to be made or suffered after the transfer because of
12 delay in perfecting shall not thereby become a transfer for or on
13 account of an antecedent debt if any acts required by the applicable
14 law to be performed in order to perfect the transfer as against liens
15 or bona fide purchasers' rights are performed within twenty-one days
16 or any period expressly allowed by the law, whichever is less. A
17 transfer to secure a future loan, if such a loan is actually made, or
18 a transfer which becomes security for a future loan shall have the
19 same effect as a transfer for or on account of a new and
20 contemporaneous consideration.

21 (5) If any lien deemed voidable under subdivision (1)(b)
22 of this section has been dissolved by the furnishing of a bond or
23 other obligation, the surety on which has been indemnified directly
24 or indirectly by the transfer of or the creation of a lien upon any
25 property of an insurer before the filing of a petition under the act

1 which results in a liquidation order, the indemnifying transfer or
2 lien shall also be deemed voidable.

3 (6) The property affected by any lien deemed voidable
4 under subsections (1) and (5) of this section shall be discharged
5 from such lien, and that property and any of the indemnifying
6 property transferred to or for the benefit of a surety shall pass to
7 the liquidator, except that the court may on due notice order any
8 such lien to be preserved for the benefit of the estate and the court
9 may direct that such conveyance be executed as may be proper or
10 adequate to evidence the title of the liquidator.

11 (7) The district court of Lancaster County shall have
12 summary jurisdiction of any proceeding by the liquidator to hear and
13 determine the rights of any parties under this section. Reasonable
14 notice of any hearing in the proceeding shall be given to all parties
15 in interest, including the obligee of a releasing bond or other like
16 obligation. When an order is entered for the recovery of indemnifying
17 property in kind or for the avoidance of an indemnifying lien, the
18 court, upon application of any party in interest, shall in the same
19 proceeding ascertain the value of the property or lien, and if the
20 value is less than the amount for which the property is indemnity or
21 than the amount of the lien, the transferee or lienholder may elect
22 to retain the property or lien upon payment of its value, as
23 ascertained by the court, to the liquidator within such reasonable
24 times as the court shall fix.

25 (8) The liability of the surety under a releasing bond or

1 other like obligation shall be discharged to the extent of the value
2 of the indemnifying property recovered or the indemnifying lien
3 nullified and avoided by the liquidator or, when the property is
4 retained under subsection (7) of this section, to the extent of the
5 amount paid to the liquidator.

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

12 (10) If an insurer, directly or indirectly, within four
13 months before the filing of a successful petition for liquidation
14 under the act or at any time in contemplation of a proceeding to
15 liquidate, pays money or transfers property to an attorney for
16 services rendered or to be rendered, the transactions may be examined
17 by the court on its own motion or shall be examined by the court on
18 petition of the liquidator and shall be held valid only to the extent
19 of a reasonable amount to be determined by the court, and the excess
20 may be recovered by the liquidator for the benefit of the estate,
21 except that if the attorney is in a position of influence in the
22 insurer or an affiliate thereof, payment of any money or the transfer
23 of any property to the attorney for services rendered or to be
24 rendered shall be governed by subdivision (1)(b)(iv) of this section.

25 (11)(a) Every officer, manager, employee, shareholder,

1 member, subscriber, attorney, or any other person acting on behalf of
2 the insurer who knowingly participates in giving any preference when
3 he or she has reasonable cause to believe the insurer is or is about
4 to become insolvent at the time of the preference shall be personally
5 liable to the liquidator for the amount of the preference. It shall
6 be permissible to infer that there is a reasonable cause to so
7 believe if the transfer was made within four months before the date
8 of filing of the successful petition for liquidation.

9 (b) Every person receiving any property from the insurer
10 or the benefit thereof as a preference voidable under subsection (1)
11 of this section shall be personally liable therefor and shall be
12 bound to account to the liquidator.

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

15 Sec. 7. Original sections 44-4805, 44-4815, 44-4821,
16 44-4826, 44-4827, and 44-4828, Reissue Revised Statutes of Nebraska,
17 are repealed.

18 Sec. 8. Since an emergency exists, this act takes effect
19 when passed and approved according to law.