

# SB1297



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1297

Introduced 2/9/2017, by Sen. John G. Mulroe

#### SYNOPSIS AS INTRODUCED:

215 ILCS 5/189  
215 ILCS 5/204

from Ch. 73, par. 801  
from Ch. 73, par. 816

Amends the Illinois Insurance Code. Provides that during a conservation, rehabilitation, or liquidation proceeding, a federal Home Loan Bank shall not be stayed, enjoined, or prohibited from exercising or enforcing any right or cause of action regarding collateral pledged under any security agreement or any pledge, security, collateral, or guarantee agreement or any other similar arrangement or credit enhancement relating to such federal Home Loan Bank security agreement. Effective immediately.

LRB100 09657 JLS 19826 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Insurance Code is amended by  
5 changing Sections 189 and 204 as follows:

6 (215 ILCS 5/189) (from Ch. 73, par. 801)

7 Sec. 189. Injunction. The court shall have jurisdiction,  
8 upon, or at any time after the filing of the complaint to issue  
9 an injunction restraining such company and its officers,  
10 agents, directors, employees and all other persons from  
11 transacting any company business or disposing of its property  
12 until the further order of the court. The court may also  
13 restrain all persons, companies, and entities from bringing or  
14 further prosecuting all actions and proceedings at law or in  
15 equity or otherwise, whether in this State or elsewhere,  
16 against the company or its assets or property or the Director  
17 except insofar as those actions or proceedings arise in or are  
18 brought in the conservation, rehabilitation, or liquidation  
19 proceeding. The court may issue such other injunctions or enter  
20 such other orders as may be deemed necessary to prevent  
21 interference with the proceedings, or with the Director's  
22 possession and control or title, rights or interests as herein  
23 provided or to prevent interference with the conduct of the

1 business by the Director, and may issue such other injunctions  
2 or enter such other orders as may be deemed necessary to  
3 prevent waste of assets or the obtaining, asserting, or  
4 enforcing of preferences, judgments, attachments, or other  
5 like liens, including common law retaining liens, or the making  
6 of any levy against such company or its property and assets  
7 while in the possession and control of the Director. The court  
8 may issue any other injunctions or enter any other orders that  
9 are necessary to protect enrollees in accordance with  
10 subsection (c) of Section 5-6 of the Health Maintenance  
11 Organization Act. Any injunction issued under this article may  
12 be served and enforced as in other civil proceedings, but no  
13 bond or other security shall be required of the plaintiff,  
14 either for costs or for any injunction. Notwithstanding any  
15 provision of this Article to the contrary, a federal Home Loan  
16 Bank shall not be stayed, enjoined, or prohibited from  
17 exercising or enforcing any right or cause of action regarding  
18 collateral pledged under any security agreement or any pledge,  
19 security, collateral, or guarantee agreement or any other  
20 similar arrangement or credit enhancement relating to such  
21 federal Home Loan Bank security agreement.

22 (Source: P.A. 88-297; 89-206, eff. 7-21-95.)

23 (215 ILCS 5/204) (from Ch. 73, par. 816)

24 Sec. 204. Prohibited and voidable transfers and liens.

25 (a) (1) A preference is a transfer of any of the property of

1 a company to or for the benefit of a creditor, for or on  
2 account of an antecedent debt, made or suffered by the company  
3 within 2 years before the filing of a complaint under this  
4 Article, the effect of which may be to enable the creditor to  
5 obtain a greater percentage of this debt than another creditor  
6 of the same class would receive.

7 (2) Any preference may be avoided by the Director as  
8 rehabilitator, liquidator, or conservator if:

9 (A) the company was insolvent at the time of the  
10 transfer; and

11 (B) the transfer was made within 4 months before the  
12 filing of the complaint; or the creditor receiving it was  
13 (i) an officer, or any employee or attorney or other person  
14 who was in fact in a position of comparable influence in  
15 the company to an officer whether or not that person held  
16 such a position, (ii) any shareholder holding, directly or  
17 indirectly, more than 5% of any class of any equity  
18 security issued by the company, or (iii) any other person,  
19 firm, corporation, association, or aggregation of  
20 individuals with whom the company did not deal at arm's  
21 length.

22 (3) Where the preference is voidable, the Director as  
23 rehabilitator, liquidator, or conservator may recover the  
24 property or, if it has been converted, its value from any  
25 person who has received or converted the property; except where  
26 a bona fide purchaser or lienor has given less than fair

1 equivalent value, the purchaser or lienor shall have a lien  
2 upon the property to the extent of the consideration actually  
3 given. Where a preference by way of lien or security title is  
4 voidable, the court may on due notice order the lien or title  
5 to be preserved for the benefit of the estate, in which event  
6 the lien or title shall pass to the Director as rehabilitator  
7 or liquidator.

8 (b) (1) A transfer of property other than real property  
9 shall be deemed to be made or suffered when it becomes so far  
10 perfected that no subsequent lien obtainable by legal or  
11 equitable proceedings on a simple contract could become  
12 superior to the rights of the transferee.

13 (2) A transfer of real property shall be deemed to be made  
14 or suffered when it becomes so far perfected that no subsequent  
15 bona fide purchaser from the company could obtain rights  
16 superior to the rights of the transferee.

17 (3) A transfer that creates an equitable lien shall not be  
18 deemed to be perfected if there are available means by which a  
19 legal lien could be created.

20 (4) A transfer not perfected before the filing of a  
21 complaint shall be deemed to be made immediately before the  
22 filing of the complaint.

23 (5) The provisions of this subsection apply whether or not  
24 there are or were creditors who might have obtained liens or  
25 persons who might have become bona fide purchasers.

26 (c) For purposes of this Section:

1           (1) A lien obtainable by legal or equitable proceedings  
2           upon a simple contract is one arising in the ordinary  
3           course of the proceedings upon the entry or docketing of a  
4           judgment or decree, or upon attachment, garnishment,  
5           execution, or like process, whether before, upon, or after  
6           judgment or decree and whether before or upon levy. It does  
7           not include liens that, under applicable law, are given a  
8           special priority over other liens that are prior in time.

9           (2) A lien obtainable by legal or equitable proceedings  
10          could become superior to the rights of a transferee, or a  
11          purchaser could obtain rights superior to the rights of a  
12          transferee within the meaning of subsection (b) of this  
13          Section, if such consequences would follow only from the  
14          lien or purchase itself, or from the lien or purchase  
15          followed by any step wholly within the control of the  
16          respective lienholder or purchaser, with or without the aid  
17          of ministerial action by public officials. A lien could  
18          not, however, become superior and a purchase could not  
19          create superior rights for the purpose of subsection (b) of  
20          this Section through any acts subsequent to an obtaining of  
21          the lien or subsequent to a purchase that requires the  
22          agreement or concurrence of any third party or that  
23          requires any further judicial action or ruling.

24          (d) A transfer of property for or on account of a new and  
25          contemporaneous consideration which is deemed under subsection  
26          (b) of this Section to be made or suffered after the transfer

1 because of delay in perfecting it does not thereby become a  
2 transfer for or on account of an antecedent debt if any acts  
3 required by the applicable law to be performed in order to  
4 perfect the transfer as against liens or bona fide purchasers'  
5 rights are performed within 21 days or any period expressly  
6 allowed by the law, whichever is less. A transfer to secure a  
7 future loan, if the loan is actually made, or a transfer that  
8 becomes security for a future loan, shall have the same effect  
9 as a transfer for or on account of a new and contemporaneous  
10 consideration.

11 (e) If any lien deemed voidable under part (2) of  
12 subsection (a) of this Section has been dissolved by the  
13 furnishing of a bond or other obligation, the surety on which  
14 has been indemnified directly or indirectly by the transfer of  
15 or the creation of a lien upon any property of a company before  
16 the filing of a complaint under this Article, the indemnifying  
17 transfer or lien shall also be deemed voidable.

18 (f) The property affected by any lien deemed voidable under  
19 subsections (a) and (e) of this Section shall be discharged  
20 from the lien, and that property and any of the indemnifying  
21 property transferred to or for the benefit of a surety shall  
22 pass to the Director as rehabilitator or liquidator, except  
23 that the court may, on due notice, order any such lien to be  
24 preserved for the benefit of the estate and the court may  
25 direct that such conveyance be executed as may be proper or  
26 adequate to evidence the title of the Director as rehabilitator

1 or liquidator.

2 (g) The court shall have summary jurisdiction over any  
3 proceeding by the Director as rehabilitator, liquidator, or  
4 conservator to hear and determine the rights of any parties  
5 under this Section. Reasonable notice of any hearings in the  
6 proceeding shall be given to all parties in interest, including  
7 the obligee of a releasing bond or other life obligation. Where  
8 an order is entered for the recovery of indemnifying property  
9 in kind or for the avoidance of an indemnifying lien, the  
10 court, upon application of any party in interest, shall in the  
11 same proceeding ascertain the value of the property or lien,  
12 and if the value is less than the amount for which the property  
13 is indemnity or than the amount of the lien, the transferee or  
14 lienholder may elect to retain the property or lien upon  
15 payment of its value, as ascertained by the court, to the  
16 Director as rehabilitator, liquidator, or conservator, within  
17 such reasonable times as the court shall fix.

18 (h) The liability of the surety under the releasing bond or  
19 other similar obligation shall be discharged to the extent of  
20 the value of the indemnifying property recovered or the  
21 indemnifying lien nullified and avoided by the Director as  
22 rehabilitator, liquidator, or conservator. Where the property  
23 is retained under subsection (g) of this Section, the liability  
24 shall be discharged to the extent of the amount paid to the  
25 Director as rehabilitator, liquidator, or conservator.

26 (i) If a creditor has been preferred and thereafter in good



1 faith gives the company further credit without security of any  
2 kind, for property which becomes a part of the company's  
3 estate, the amount of the new credit remaining unpaid at the  
4 time of the petition may be set off against the preference  
5 which would otherwise be recoverable from the creditor.

6 (j) If a company shall, directly or indirectly, within 4  
7 months before the filing of a complaint under this Article, or  
8 at any time in contemplation of such a proceeding, pay money or  
9 transfer property to any attorney for services rendered or to  
10 be rendered, the transactions may be examined by the court on  
11 its own motion or shall be examined by the court on petition of  
12 the Director as rehabilitator, liquidator, or conservator and  
13 shall be held valid only to the extent of a reasonable amount  
14 to be determined by the court, and the excess may be recovered  
15 by the Director as rehabilitator, liquidator, or conservator  
16 for the benefit of the estate provided that where the attorney  
17 is in a position of influence in the company or an affiliate  
18 thereof payment of any money or the transfer of any property to  
19 the attorney for services rendered or to be rendered shall be  
20 governed by item (B) of part (2) of subsection (a) of this  
21 Section.

22 (k) (1) An officer, director, manager, employee,  
23 shareholder, member, subscriber, attorney, or other person  
24 acting on behalf of the company who knowingly participates in  
25 giving any preference when that officer, director, manager,  
26 employee, shareholder, member, subscriber, attorney, or other

1 person has reasonable cause to believe the company is or is  
2 about to become insolvent at the time of the preference shall  
3 be personally liable to the Director as rehabilitator,  
4 liquidator, or conservator for the amount of the preference.  
5 There is a reasonable cause to so believe if the transfer was  
6 made within 4 months before the date of filing of the  
7 complaint.

8 (2) A person receiving any property from the company or the  
9 benefit thereof as a preference voidable under subsection (a)  
10 of this Section shall be personally liable therefor and shall  
11 be bound to account to the Director as rehabilitator,  
12 liquidator, or conservator.

13 (3) Nothing in this Section shall prejudice any other claim  
14 by the Director as rehabilitator, liquidator, or conservator  
15 against any person.

16 (1) For purposes of this Section, the company is presumed  
17 to have been insolvent on and during the 4 month period  
18 immediately preceding the date of the filing of the complaint.

19 (m) The Director as rehabilitator, liquidator, or  
20 conservator may not avoid a transfer under this Section to the  
21 extent that the transfer was:

22 (A) Intended by the company and the creditor to or for  
23 whose benefit the transfer was made to be a contemporaneous  
24 exchange for new value given to the company, and was in  
25 fact a substantially contemporaneous exchange; ~~or~~

26 (B) In payment of a debt incurred by the company in the

1 ordinary course of business or financial affairs of the  
2 company and the transferee; made in the ordinary course of  
3 business or financial affairs of the company and the  
4 transferee; and made according to ordinary business terms;  
5 ~~or~~

6 (C) In the case of a transfer by a company where the  
7 Director has determined that an event described in Section  
8 35A-25 or 35A-30 has occurred, specifically approved by the  
9 Director in writing pursuant to this subsection, whether or  
10 not the company is in receivership under this Article. Upon  
11 approval by the Director, such a transfer cannot later be  
12 found to constitute a prohibited or voidable transfer based  
13 solely upon a deviation from the statutory payment  
14 priorities established by law for any subsequent  
15 receivership; or -

16 (D) Of money or other property arising under or in  
17 connection with any federal Home Loan Bank security  
18 agreement or any pledge, security, collateral, or  
19 guarantee agreement or any other similar arrangement or  
20 credit enhancement relating to such federal Home Loan Bank  
21 security agreement.

22 (n) The Director as rehabilitator, liquidator, or  
23 conservator may avoid any transfer of or lien upon the property  
24 of a company that the estate of the company or a policyholder,  
25 creditor, member, or stockholder of the company may have  
26 avoided, and the Director as rehabilitator, liquidator, or

1 conservator may recover and collect the property so transferred  
2 or its value from the person to whom it was transferred unless  
3 the property was transferred to a bona fide holder for value  
4 before the filing of the complaint. The Director as  
5 rehabilitator, liquidator, or conservator shall be deemed a  
6 creditor for purposes of pursuing claims under the Uniform  
7 Fraudulent Transfer Act.

8 (Source: P.A. 93-1083, eff. 2-7-05.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law.