

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. The provisions of this
15 Section are subject to the exclusion set forth in subsection
16 (o) of Section 204 of this Article.

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

18 (215 ILCS 5/204) (from Ch. 73, par. 816)

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

20 (a) (1) A preference is a transfer of any of the property of
21 a company to or for the benefit of a creditor, for or on
22 account of an antecedent debt, made or suffered by the company
23 within 2 years before the filing of a complaint under this
24 Article, the effect of which may be to enable the creditor to
25 obtain a greater percentage of this debt than another creditor

1 of the same class would receive.

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

4 (A) the company was insolvent at the time of the
5 transfer; and

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

17 (3) Where the preference is voidable, the Director as
18 rehabilitator, liquidator, or conservator may recover the
19 property or, if it has been converted, its value from any
20 person who has received or converted the property; except where
21 a bona fide purchaser or lienor has given less than fair
22 equivalent value, the purchaser or lienor shall have a lien
23 upon the property to the extent of the consideration actually
24 given. Where a preference by way of lien or security title is
25 voidable, the court may on due notice order the lien or title
26 to be preserved for the benefit of the estate, in which event

1 the lien or title shall pass to the Director as rehabilitator
2 or liquidator.

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

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

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

15 (4) A transfer not perfected before the filing of a
16 complaint shall be deemed to be made immediately before the
17 filing of the complaint.

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

21 (c) For purposes of this Section:

22 (1) A lien obtainable by legal or equitable proceedings
23 upon a simple contract is one arising in the ordinary
24 course of the proceedings upon the entry or docketing of a
25 judgment or decree, or upon attachment, garnishment,
26 execution, or like process, whether before, upon, or after

1 judgment or decree and whether before or upon levy. It does
2 not include liens that, under applicable law, are given a
3 special priority over other liens that are prior in time.

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

19 (d) A transfer of property for or on account of a new and
20 contemporaneous consideration which is deemed under subsection
21 (b) of this Section to be made or suffered after the transfer
22 because of delay in perfecting it does not thereby become a
23 transfer for or on account of an antecedent debt if any acts
24 required by the applicable law to be performed in order to
25 perfect the transfer as against liens or bona fide purchasers'
26 rights are performed within 21 days or any period expressly

1 allowed by the law, whichever is less. A transfer to secure a
2 future loan, if the loan is actually made, or a transfer that
3 becomes security for a future loan, shall have the same effect
4 as a transfer for or on account of a new and contemporaneous
5 consideration.

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

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

23 (g) The court shall have summary jurisdiction over any
24 proceeding by the Director as rehabilitator, liquidator, or
25 conservator to hear and determine the rights of any parties
26 under this Section. Reasonable notice of any hearings in the

1 proceeding shall be given to all parties in interest, including
2 the obligee of a releasing bond or other life obligation. Where
3 an order is entered for the recovery of indemnifying property
4 in kind or for the avoidance of an indemnifying lien, the
5 court, upon application of any party in interest, shall in the
6 same proceeding ascertain the value of the property or lien,
7 and if the value is less than the amount for which the property
8 is indemnity or than the amount of the lien, the transferee or
9 lienholder may elect to retain the property or lien upon
10 payment of its value, as ascertained by the court, to the
11 Director as rehabilitator, liquidator, or conservator, within
12 such reasonable times as the court shall fix.

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

21 (i) If a creditor has been preferred and thereafter in good
22 faith gives the company further credit without security of any
23 kind, for property which becomes a part of the company's
24 estate, the amount of the new credit remaining unpaid at the
25 time of the petition may be set off against the preference
26 which would otherwise be recoverable from the creditor.

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

17 (k) (1) An officer, director, manager, employee,
18 shareholder, member, subscriber, attorney, or other person
19 acting on behalf of the company who knowingly participates in
20 giving any preference when that officer, director, manager,
21 employee, shareholder, member, subscriber, attorney, or other
22 person has reasonable cause to believe the company is or is
23 about to become insolvent at the time of the preference shall
24 be personally liable to the Director as rehabilitator,
25 liquidator, or conservator for the amount of the preference.
26 There is a reasonable cause to so believe if the transfer was

1 made within 4 months before the date of filing of the
2 complaint.

3 (2) A person receiving any property from the company or the
4 benefit thereof as a preference voidable under subsection (a)
5 of this Section shall be personally liable therefor and shall
6 be bound to account to the Director as rehabilitator,
7 liquidator, or conservator.

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

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

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

17 (A) Intended by the company and the creditor to or for
18 whose benefit the transfer was made to be a contemporaneous
19 exchange for new value given to the company, and was in
20 fact a substantially contemporaneous exchange; or

21 (B) In payment of a debt incurred by the company in the
22 ordinary course of business or financial affairs of the
23 company and the transferee; made in the ordinary course of
24 business or financial affairs of the company and the
25 transferee; and made according to ordinary business terms;

26 ~~or~~

1 (C) In the case of a transfer by a company where the
2 Director has determined that an event described in Section
3 35A-25 or 35A-30 has occurred, specifically approved by the
4 Director in writing pursuant to this subsection, whether or
5 not the company is in receivership under this Article. Upon
6 approval by the Director, such a transfer cannot later be
7 found to constitute a prohibited or voidable transfer based
8 solely upon a deviation from the statutory payment
9 priorities established by law for any subsequent
10 receivership; or -

11 (D) Of money or other property arising under or in
12 connection with any Federal Home Loan Bank security
13 agreement or any pledge, security, collateral or guarantee
14 agreement, or any other similar arrangement or credit
15 enhancement relating to a Federal Home Loan Bank security
16 agreement.

17 (n) The Director as rehabilitator, liquidator, or
18 conservator may avoid any transfer of or lien upon the property
19 of a company that the estate of the company or a policyholder,
20 creditor, member, or stockholder of the company may have
21 avoided, and the Director as rehabilitator, liquidator, or
22 conservator may recover and collect the property so transferred
23 or its value from the person to whom it was transferred unless
24 the property was transferred to a bona fide holder for value
25 before the filing of the complaint. The Director as
26 rehabilitator, liquidator, or conservator shall be deemed a

1 creditor for purposes of pursuing claims under the Uniform
2 Fraudulent Transfer Act.

3 (o) Notwithstanding any provision of this Article to the
4 contrary, a Federal Home Loan Bank shall not be stayed,
5 enjoined, or prohibited from exercising or enforcing any right
6 or cause of action regarding collateral pledged under any
7 security agreement or any pledge, security, collateral or
8 guarantee agreement, or any other similar arrangement or credit
9 enhancement relating to a Federal Home Loan Bank security
10 agreement.

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

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.