

E AND R AMENDMENTS TO LB 337

Introduced by Murante, 49, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments
2 thereto and insert the following sections:

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

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

11 (a) The transaction of further business;

12 (b) The transfer of property;

13 (c) Interference with the receiver or with a proceeding
14 under the act;

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

16 (e) Dissipation and transfer of bank accounts;

17 (f) The institution or further prosecution of any actions
18 or proceedings;

19 (g) The obtaining of preferences, judgments, attachments,
20 garnishments, or liens against the insurer, its assets, or its
21 insureds;

22 (h) The levying of execution against the insurer, its
23 assets, or its insureds;

1 (i) The making of any sale or deed for nonpayment of
2 taxes or assessments that would lessen the value of the assets of
3 the insurer;

4 (j) The withholding from the receiver of books, accounts,
5 documents, or other records relating to the business of the
6 insurer; or

7 (k) Any other threatened or contemplated action that
8 might lessen the value of the insurer's assets or prejudice
9 the rights of insureds, creditors, or shareholders or the
10 administration of any proceeding under the act.

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

14 (3) A Federal Home Loan Bank shall not be stayed,
15 enjoined, or prohibited from exercising or enforcing any right or
16 cause of action regarding collateral pledged under any security
17 agreement, or any pledge, security, collateral or guarantee
18 agreement or any other similar arrangement or credit enhancement
19 relating to such Federal Home Loan Bank security agreement.

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

22 44-4815 (1) Any Except as provided in subsection (4) of
23 this section, any court in this state before which any action
24 or proceeding in which the insurer is a party or is obligated
25 to defend a party is pending when a rehabilitation order against
26 the insurer is entered shall stay the action or proceeding for
27 ninety days and such additional time as is necessary for the

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

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

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

27 (4) A Federal Home Loan Bank shall not be stayed,

1 enjoined, or prohibited from exercising or enforcing any right or
2 cause of action regarding collateral pledged under any security
3 agreement, or any pledge, security, collateral or guarantee
4 agreement or any other similar arrangement or credit enhancement
5 relating to such Federal Home Loan Bank security agreement.

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
10 her under the Nebraska Insurers Supervision, Rehabilitation,
11 and Liquidation Act and to determine his or her reasonable
12 compensation. The special deputy shall have all powers of the
13 liquidator granted by this section. The special deputy shall serve
14 at the pleasure of the 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
23 than reimbursement for reasonable travel and per diem living
24 expenses. No other committee of any nature shall be appointed by
25 the director or the court in liquidation proceedings conducted
26 under the act;

27 (d) To fix the reasonable compensation of employees,

1 agents, legal counsel, actuaries, accountants, appraisers, and
2 consultants with the approval of the court;

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

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

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

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

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

23 (ii) To do such other acts as are necessary or expedient
24 to collect, conserve, or protect its assets or property, including
25 the power to sell, compound, compromise, or assign debts for
26 purposes of collection upon such terms and conditions as he or she
27 deems best; and

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

3 (i) To conduct public and private sales of the property
4 of the insurer;

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

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

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

23 (m) To enter into such contracts as are necessary to
24 carry out the order to liquidate and to affirm or disavow
25 any contracts to which the insurer is a party, except that a
26 liquidator shall not have power to disavow, reject, or repudiate
27 any Federal Home Loan Bank security agreement, or any pledge,

1 security, collateral or guarantee agreement or any other similar
2 arrangement or credit enhancement relating to such Federal Home
3 Loan Bank security agreement;

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

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

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

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

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

27 (s) To file any necessary documents for record in the

1 office of any register of deeds or record office in this state or
2 elsewhere where property of the insurer is located;

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

11 (u) To exercise and enforce all the rights, remedies, and
12 powers of any insured, creditor, shareholder, or member, including
13 any power to avoid any transfer or lien that may be given by
14 the general law and that is not included with sections 44-4826 to
15 44-4828, except that a liquidator shall not have power to disavow,
16 reject, or repudiate any Federal Home Loan Bank security agreement,
17 or any pledge, security, collateral or guarantee agreement or any
18 other similar arrangement or credit enhancement relating to such
19 Federal Home Loan Bank security agreement;

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

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

27 (x) To exercise all powers now held or hereafter

1 conferred upon receivers by the laws of this state not inconsistent
2 with the provisions of the act.

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

15 (b) The extended period to report claims made available
16 by the liquidator shall be subject to the terms of the policy to
17 which it relates. The liquidator shall make available such extended
18 period within sixty days after the order of liquidation at a
19 charge to be determined by the liquidator subject to approval of
20 the court. Such offer shall be deemed rejected unless the offer
21 is accepted in writing and the charge is paid within ninety days
22 after the order of liquidation. No commissions, premium taxes,
23 assessments, or other fees shall be due on the charge pertaining to
24 the extended period to report claims.

25 (3) The enumeration in this section of the powers and
26 authority of the liquidator shall not be construed as a limitation
27 upon him or her nor shall it exclude in any manner his or her right

1 to do such other acts not in this section specifically enumerated
2 or otherwise provided for as may be necessary or appropriate for
3 the accomplishment of or in aid of the purpose of liquidation.

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

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

10 44-4826 (1) Every transfer made or suffered and every
11 obligation incurred by an insurer within one year prior to the
12 filing of a successful petition for rehabilitation or liquidation
13 under the Nebraska Insurers Supervision, Rehabilitation, and
14 Liquidation Act shall be fraudulent as to then existing and future
15 creditors if made or incurred without fair consideration or with
16 actual intent to hinder, delay, or defraud either existing or
17 future creditors. A Except as provided in subsection (5) of this
18 section, a transfer made or an obligation incurred by an insurer
19 ordered to be rehabilitated or liquidated under the act which is
20 fraudulent under this section may be avoided by the receiver,
21 except as to a person who in good faith is a purchaser, lienor,
22 or obligee for a present fair equivalent value, and except that
23 any purchaser, lienor, or obligee who in good faith has given a
24 consideration less than fair for such transfer, lien, or obligation
25 may retain the property, lien, or obligation as security for
26 repayment. The court may, on due notice, order any such transfer
27 or obligation to be preserved for the benefit of the estate, and

1 in that event, the receiver shall succeed to and may enforce the
2 rights of the purchaser, lienor, or obligee.

3 (2) (a) 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 equitable
6 proceedings on a simple contract could become superior to the
7 rights of the transferee under subsection (3) of section 44-4828.

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

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

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

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

21 (3) Any Except as provided in subsection (5) of this
22 section, any transaction of the insurer with a reinsurer shall
23 be deemed fraudulent and may be avoided by the receiver under
24 subsection (1) of this section if:

25 (a) The transaction consists of the termination,
26 adjustment, or settlement of a reinsurance contract in which
27 the reinsurer is released from any part of its duty to pay the

1 originally specified share of losses that had occurred prior to the
2 time of the transactions unless the reinsurer gives a present fair
3 equivalent value for the release; and

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

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

11 (5) A receiver may not avoid any transfer of, or any
12 obligation to transfer, money or any other property arising
13 under or in connection with any Federal Home Loan Bank security
14 agreement, or any pledge, security, collateral or guarantee
15 agreement or any other similar arrangement or credit enhancement
16 relating to such Federal Home Loan Bank security agreement.
17 However, a transfer may be avoided under this subsection if it
18 was made with actual intent to hinder, delay, or defraud either
19 existing or future creditors.

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

22 44-4827 (1) After a petition for rehabilitation or
23 liquidation has been filed, a transfer of any of the real property
24 of the insurer made to a person acting in good faith shall be
25 valid against the receiver if made for a present fair equivalent
26 value or, if not made for a present fair equivalent value, then to
27 the extent of the present consideration actually paid therefor, for

1 which amount the transferee shall have a lien on the property so
2 transferred. The commencement of a proceeding in rehabilitation or
3 liquidation shall be constructive notice upon the recording of a
4 copy of the petition for or order of rehabilitation or liquidation
5 with the register of deeds in the county where any real property in
6 question is located. The exercise by a court of the United States
7 or any state or jurisdiction to authorize or effect a judicial sale
8 of real property of the insurer within any county in any state
9 shall not be impaired by the pendency of such a proceeding unless
10 the copy is recorded in the county prior to the consummation of the
11 judicial sale.

12 (2) After a petition for rehabilitation or liquidation
13 has been filed and before either the receiver takes possession
14 of the property of the insurer or an order of rehabilitation or
15 liquidation is granted:

16 (a) A transfer of any of the property of the insurer,
17 other than real property, made to a person acting in good faith
18 shall be valid against the receiver if made for a present fair
19 equivalent value or, if not made for a present fair equivalent
20 value, then to the extent of the present consideration actually
21 paid therefor, for which amount the transferee shall have a lien on
22 the property so transferred;

23 (b) A person indebted to the insurer or holding property
24 of the insurer may, if acting in good faith, pay the indebtedness
25 or deliver the property or any part thereof to the insurer or upon
26 his or her order with the same effect as if the petition were not
27 pending;

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

4 (d) A person asserting the validity of a transfer under
5 this section shall have the burden of proof. Except as elsewhere
6 provided in this section, no transfer by or on behalf of the
7 insurer after the date of the petition for liquidation by any
8 person other than the liquidator shall be valid against the
9 liquidator.

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

14 (4) Nothing in the Nebraska Insurers Supervision,
15 Rehabilitation, and Liquidation Act shall impair the negotiability
16 of currency or negotiable instruments.

17 (5) A receiver may not avoid any transfer of, or any
18 obligation to transfer, money or any other property arising
19 under or in connection with any Federal Home Loan Bank security
20 agreement, or any pledge, security, collateral or guarantee
21 agreement or any other similar arrangement or credit enhancement
22 relating to such Federal Home Loan Bank security agreement.
23 However, a transfer may be avoided under this subsection if it
24 was made with actual intent to hinder, delay, or defraud either
25 existing or future creditors.

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

1 44-4828 (1)(a) A preference shall mean a transfer of
2 any of the property of an insurer to or for the benefit of a
3 creditor, for or on account of an antecedent debt, made or suffered
4 by the insurer within one year before the filing of a successful
5 petition for liquidation under the Nebraska Insurers Supervision,
6 Rehabilitation, and Liquidation Act the effect of which transfer
7 may be to enable the creditor to obtain a greater percentage of
8 such debt than another creditor of the same class would receive.
9 If a liquidation order is entered while the insurer is already
10 subject to a rehabilitation order, such transfers shall be deemed
11 preferences if made or suffered within one year before the filing
12 of the successful petition for rehabilitation or within two years
13 before the filing of the successful petition for liquidation,
14 whichever time is shorter.

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

17 (i) The insurer was insolvent at the time of the
18 transfer;

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

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

25 (iv) The creditor receiving it was: An officer; any
26 employee, attorney, or other person who was in fact in a position
27 of comparable influence in the insurer to an officer whether

1 or not he or she held such position; any shareholder holding
2 directly or indirectly more than five percent of any class of any
3 equity security issued by the insurer; or any other person, firm,
4 corporation, association, or aggregation of persons with whom the
5 insurer did not deal at arm's length.

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

16 (d) A liquidator or receiver shall not avoid any
17 preference arising under or in connection with any Federal Home
18 Loan Bank security agreement, or any pledge, security, collateral
19 or guarantee agreement or any other similar arrangement or credit
20 enhancement relating to such Federal Home Loan Bank security
21 agreement.

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

27 (b) A transfer of real property shall be deemed to

1 be made or suffered when it becomes so far perfected that no
2 subsequent bona fide purchaser from the insurer could obtain rights
3 superior to the rights of the transferee.

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

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

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

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

21 (b) A lien obtainable by legal or equitable proceedings
22 could become superior to the rights of a transferee or a purchaser
23 could obtain rights superior to the rights of a transferee within
24 the meaning of subsection (2) of this section if such consequences
25 would follow only from the lien or purchase itself or from the
26 lien or purchase followed by any step wholly within the control
27 of the respective lienholder or purchaser with or without the

1 aid of ministerial action by public officials. Such a lien could
2 not, however, become superior and such a purchase could not
3 create superior rights for the purpose of subsection (2) of this
4 section through any acts subsequent to the obtaining of such a
5 lien or subsequent to such a purchase which require the agreement
6 or concurrence of any third party or which require any further
7 judicial action or ruling.

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

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

27 (6) The property affected by any lien deemed voidable

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

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

22 (8) The liability of the surety under a releasing bond
23 or other like obligation shall be discharged to the extent of the
24 value of the indemnifying property recovered or the indemnifying
25 lien nullified and avoided by the liquidator or, when the property
26 is retained under subsection (7) of this section, to the extent of
27 the amount paid to the liquidator.

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

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

21 (11)(a) Every officer, manager, employee, shareholder,
22 member, subscriber, attorney, or any other person acting on behalf
23 of the insurer who knowingly participates in giving any preference
24 when he or she has reasonable cause to believe the insurer is
25 or is about to become insolvent at the time of the preference
26 shall be personally liable to the liquidator for the amount of
27 the preference. It shall be permissible to infer that there is a

1 reasonable cause to so believe if the transfer was made within four
2 months before the date of filing of the successful petition for
3 liquidation.

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

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

10 Sec. 7. Original sections 44-4805, 44-4815, 44-4821,
11 44-4826, 44-4827, and 44-4828, Reissue Revised Statutes of
12 Nebraska, are repealed.

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